

# Madison Gas and Electric Company Purchase Order Terms and Conditions

## NOTICE

### Smart Grid Investment Grant (SGIG) Terms and Conditions

If Contractor is providing goods and/or services as part of Madison Gas and Electric Company's (MGE) SGIG and Contractor has executed an SGIG Contract with MGE, Contractor's provision of such goods and/or services are subject to and governed by the terms and conditions of the executed SGIG Contract.

### All Other Purchase Order Terms and Conditions

All other purchase orders are governed by and subject to the following conditions of purchase:

Acceptance of this Order, either by acknowledgement or performance, constitutes an unqualified agreement of the following:

**1. Modification of Agreement**

No modification of this contract shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative. Buyer shall have the right to make changes in this Order by a notice in writing to Seller.

**2. Delivery**

Delivery must be made within the time stated on the face of this Purchase Order. In all cases, should delivery not be effected as requested, Buyer reserves the right, at its option, to purchase elsewhere and charge Seller for any loss incurred as a result thereof, or to cancel the Order. Acceptance by Buyer of a late delivery of either the whole or a part of the Order shall not constitute a waiver of Buyer's claim for damages which the late delivery may have caused. Goods shipped to Buyer in advance of delivery schedule may be returned to Seller at Seller's expense.

**3. Warranty and Indemnity**

Seller expressly warrants that all goods, material, and workmanship will conform with applicable drawings, specifications, samples, or other descriptions given and will be free from any and all patent and latent defects. Seller also warrants that all goods will be of good and merchantable quality and fit and suitable for the goods' intended purpose. Goods will be subject to test and inspection by Buyer at place of manufacture or a destination or both. Any goods found at any time to be damaged (including goods damaged due to unsatisfactory packaging by Seller) or defective in material or workmanship may be returned at Seller's expense, and Buyer shall have the option of returning such goods to Seller any time for credit or replacement at the price charged. However, Buyer's inspection or failure to inspect shall in no way relieve Seller of responsibility hereunder, and Seller will in all cases indemnify and hold Buyer harmless against any and all claims, liabilities, costs, damages, or expenses (including attorneys' fees) of any kind caused by Seller's breach of the foregoing warranty. The foregoing shall not be in limitation of any rights which Buyer may have at law or in equity by reason of (1) any breach of warranty, express or implied, or (2) any defect in the product, or (3) any negligence of Seller.

**4. Overshipments**

Materials shipped on this Order must not be in excess of quantity ordered except in accordance with trade custom and usage. Overshipments may be returned at Seller's expense.

**5. Design Rights**

Seller agrees that it will keep confidential the features of any design or drawing from which goods are produced for Buyer (unless such drawings are entirely of standard items made or furnished by Seller to the trade). The design shall be considered as the Buyer's, and Seller is not to furnish to anyone else the same goods or parts thereof without Buyer's written permission.

**6. Patent Guarantee**

Seller warrants that the sale or use of the goods or materials covered by this Order will not infringe or contribute to the infringement of any patents, trademarks, or copyrights, either in the U.S.A. or foreign countries, and Seller agrees to indemnify and hold Buyer harmless from and against all claims, liabilities, costs, damages, or expenses including attorneys' fees of any kind involving any actual or alleged infringement, excluding, however, any infringement solely relating to concepts, designs, or ideas furnished in writing by Buyer and which, as between Buyer and Seller, originated with Buyer.

**7. Cancellation Provisions**

Either party shall have the right to cancel this Order in the event that the other party becomes bankrupt or insolvent or makes an assignment for the benefit of creditors. In addition to all of the other rights which Buyer may have to cancel this Order, Buyer shall have the further right, without assigning any reason therefor, to terminate any work hereunder, in whole or in part, at any time. Buyer will not be liable to Seller for any costs for completed articles, articles in process, or materials acquired or contracted for, if such costs were incurred more than the permitted number of days prior to the delivery date as stated on the face of this Purchase Order. If Buyer cancels this Order within such time as specified on the face of this Purchase Order and if the parties cannot agree within a reasonable time upon the amount of fair compensation to the Seller for such termination, (a) Buyer will pay the contract price for all articles completed in accordance with this Order and not previously paid for, (b) Buyer will pay a fair and proper proportion of the contract price for articles in process, and (c) Buyer will pay Seller's cost for all materials acquired or contracted for by Seller for the purpose of fulfilling this Order, which Seller is unable to cancel or return. Should Buyer so desire, cancellation charges shall be subject to Buyer's audit.

With Buyer's consent, Seller may sell or retain at an agreed price any completed articles, materials, work in process, or other things, payment for which, in whole or in part, by Buyer is provided for in the preceding paragraph, and Seller shall credit or pay Buyer the amounts so agreed or received. Any such goods, materials, work in progress, or other things not so retained or sold shall be transferred and delivered by Seller in accordance with Buyer's directions. Appropriate adjustment will be made for delivery costs or savings therein.

**8. Compliance with Law**

Seller warrants that the goods and/or services produced and/or rendered pursuant to this Purchase Order or contract will be produced and/or rendered in accordance with the requirements of all applicable federal, state, and local laws, statutes, and regulations,

including without limitation, the applicable provisions of the Fair Labor Standards Act of 1938, as amended, and that all invoices covering such goods and/or services will contain the following clause or a substantially similar clause: "The goods and/or services covered by this invoice were produced and/or rendered in compliance with the requirements of the applicable provisions of the Fair Labor Standards Act of 1938, as amended."

**9. Waivers**

Any waiver of strict compliance with the terms of this Order shall not be a waiver of Buyer's right to insist upon strict compliance with the terms of the Order thereafter.

**10. Equal Employment Opportunities**

In the event this Purchase Order covers a purchase which is subject to the provisions of Presidential Executive Order No. 11246, Section 503 of the Rehabilitation Act of 1973 and 38 USC 4212, a certificate of compliance must be executed by Seller and returned to Buyer with Seller's invoice.

**11. Insurance for Agents or Employees of Seller Working on Buyer's Premises**

Whenever Seller's agents or employees are on Buyer's premises, Seller will provide the following insurance coverage to protect both Buyer and Seller and will deliver to Buyer a certificate thereof:

- (A) Minimum Bodily Injury Liability of One Million Dollars per person. Three Million Dollars per occurrence.
- (B) Minimum Property Damage of One Million Dollars per occurrence, Three Million Dollars aggregate operation and
- (C) All claims under Workers' Compensation or similar employment benefits.

The foregoing shall not limit Seller's liability to Buyer under this Order or otherwise.

**12. Occupational Health and Safety Regulations**

Seller agrees that the materials or services provided under this Purchase Order will comply with current regulations under the Occupational Health and Safety Act.