



Appendix B

SAN PASQUAL BAND OF MISSION INDIANS OF CALIFORNIA GENERAL TERMS & CONDITIONS OF PURCHASE (FORM NO. P-0001)

DEFINITIONS:

- (a) **Buyer** – shall mean San Pasqual Band of Mission Indians, having its principal place of business at 27458 North Lake Wohlford Road (P.O. Box 365), Valley Center, CA 92082.
- (b) **Federal Acquisition Regulations “FAR” clause** – is called out directly or by reference, the terms “Contractor” shall mean “Seller” and where noted or where necessary to derive proper meaning in a subcontract situation “Contracting Officer” shall mean “Buyer” and “Government” shall mean “Buyer or the Federal Government.”
- (c) **Order** – shall mean any contract entered into which incorporates this form placed with Seller by Buyer.

1. SPECIAL INSTRUCTIONS:

- (a) **PACKING AND CRATING.** All Items shall be suitably packed by Seller, hereinafter referred to as “Seller” and/or “Vendor” to insure protection in shipment and storage. Prices include all charges for Seller’s packing and crating. Shipments of any hazardous materials or substances must be packaged and transported in compliance with all applicable provisions of the Code of Federal Regulations (C.F.R.) Title 49.
- (b) **PACKING SHEETS:** Packing sheets must accompany each case or parcel showing this Purchase Order (“Order”) number, contents and Buyer’s part number where applicable. Buyer’s Order number must be shown on the outside of each package and on all packing sheets, invoices, bills of lading, correspondence and other documents. If shipment is made in more than one container, a copy of the master packing list must be included in each container, identifying by appropriate mark the portion of the shipment within that container.

(c) INVOICES, PRICE AND PAYMENT

- (1) Invoices shall be (i) submitted in triplicate for each purchase order, (with one marked as the **ORIGINAL**, unless otherwise specified by the Buyer), (ii) mailed on the date of shipment , (iii) contain an itemized listing of all purchases with manufacturer’s serial number listed where applicable, (iv) state the Discount Terms applicable to each item, , and (v) shall contain Seller’s Federal Tax Identification number. All Invoices shall be forwarded to the Buyer’s Accounting Department at the address specified hereunder:

SAN PASQUAL BAND OF MISSION INDIANS OF CALIFORNIA

SAN PASQUAL RESERVATION

P.O. BOX 365

27458 LAKE WOHLFORD RD.

VALLEY CENTER, CA 92082

ATTENTION: ACCOUNTS PAYABLE

**BUYER IS A TAX EXEMPT ENTITY; CONSEQUENTLY, TAXES SHALL NOT BE
APPLIED TO ANY PURCHASES MADE BY BUYER. Seller is to certify on all invoices**



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that the goods and/or services provided were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the U.S. Department of Labor issued thereunder.

- (2) **Seller** warrants that the price to be charged for the items covered by this Order shall not exceed prices charged others under comparable conditions. Seller shall refund any excessive amount paid by Buyer.
- (3) Payment of Seller's invoice may be offset for: (i) any damages resulting from breach of contract under any contract between Buyer and Seller, (ii) any amount owing at any time from Seller to Buyer, or (iii) any adjustment for shortage, rejection and any costs occasioned thereby. The date for any applicable cash discount calculation shall be the date acceptable material is received or the date an acceptable invoice is received, whichever is later. Payment for any shipment in advance of schedule may, at Buyer's option be made on the basis of the scheduled delivery date.

(d) SHIPMENT.

- (1) Unless otherwise specified on the purchase order, delivery shall be FOB, freight prepaid and to Buyer's specified location. Seller shall bear all costs for cartage, boxing or containers as required.
- (2) In the event that items are sold F.O.B. shipping point Seller is to prepay and add shipping charges to the invoice. Seller shall retain title and bear the risk of loss or damage to the items purchased until they are delivered, received and accepted by Buyer at Buyer's designated delivery location.
- (3) Unless otherwise specified by Buyer, Seller is to insure all shipments to Buyer's designated destination. Whenever shipment tariff rates are based on released valuation of items shipped, Seller shall declare the lowest released valuation to obtain the lowest possible tariff rate. Excess tariff charges resulting from increased valuation will be charged back to Seller.

(e) ROUTING REQUIREMENTS

Are to be as specified by Buyer at the time of Order placement.

(f) DELIVERY SCHEDULE:

Seller agrees to deliver acceptable parts in strict conformance to the delivery schedule as it appears on the face of this Order, and agrees that Buyer may return at Seller's expense and risk all material shipped otherwise. If Seller's deliveries fail to meet the schedules specified by Buyer with the result that Buyer is compelled to call upon Seller to ship by other than designated routing to expedite delivery, Seller shall assume the difference for the additional cost of transportation. Seller shall not manufacture or order materials in advance of Seller's specified flow time or deliver any materials in advance of schedule set forth in this Order without Buyer's written permission. Seller agrees to notify Buyer in writing of any potential delay in schedule. Material delivered under this Order in excess of the amount ordered herein shall be



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returned to Seller or retained by Buyer at no cost to Buyer. Time is of the essence in performance of this Order by Seller.



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(g) HAZARDOUS SUBSTANCE INFORMATION

Seller shall provide a completed Material Safety Data Sheet (MSDS) for each item or material which contains hazardous substances as defined by Cal/OSHA General Industry Safety Order 5194. Buyer will restrict all proprietary ingredient information to use by Buyer's authorized representatives for the protection of its employees, except where disclosure to federal, state, or local agencies is required by federal, state, or local laws and regulations.

(h) TECHNICAL INFORMATION, LANGUAGE AND MEASUREMENT

All notices and binding communications and/or reports, drawings and other technical information shall be in English and shall employ the units of measure customarily used by Buyer in the U.S.A.

2. ACCEPTANCE

This Order constitutes Buyer's offer to Seller and becomes a binding contract on the terms set forth herein when it is accepted by Seller either by acknowledgment or by commencement of performance. **THIS ORDER MAY BE ACCEPTED ONLY ON THE TERMS SET FORTH HEREIN, INCORPORATED HEREIN BY REFERENCE, OR SET FORTH ON ANY ATTACHMENTS HERETO. TERMS IN SELLER'S ACCEPTANCE IN ADDITION TO OR NOT IDENTICAL WITH SUCH TERMS ARE HEREBY OBJECTED TO AND REJECTED BY BUYER AND WILL NOT BECOME A PART OF THE CONTRACT UNLESS AGREED TO IN WRITING BY BUYER'S AUTHORIZED PERSONNEL.**

3. GRATUITIES

Seller and its employees, agents and representatives shall not offer gratuities to any employee of Buyer. Failure of Seller to honor this commitment, may at Buyer's option, result in termination of this Order in accordance with the default clause hereof.

4. INSPECTION

At Buyer's option, Goods and/or Work performed under this Order shall be subject to inspection at Seller's plant by representatives of Buyer. Seller shall provide reasonable facilities for the safety and convenience of said representatives.

Each item ordered will be subject to final inspection and acceptance by Buyer at destination notwithstanding that title may have passed to Buyer, that Buyer may have made a prior payment or that Buyer may have performed some type of source inspection. If at any time any of the items are found to be defective in material or workmanship or not in conformity with the drawings, specifications, samples, or other requirements of this Order, Buyer may, in addition to any other rights it may have under this Order or otherwise, (i) correct or have corrected the nonconformity at Seller's expense or reject and return said item to Seller, and (ii) recover by offset or otherwise any and all costs,



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expenses and damages paid, incurred or suffered by Buyer as a result of or relating to holding, return, replacement, correction or rejection of nonconforming items. Rejected articles may be returned at Seller's risk and expense. The Seller shall be responsible for the cost of transportation related to the return and reshipment of any articles rejected by Buyer for failure to meet specifications. Delivery of defective items shall not be deemed to satisfy the delivery schedule required herein nor shall acceptance of any item be deemed to alter or affect the obligation of Seller or the rights of Buyer under the Warranties article of this Order. The inspection, review or approval by Buyer of any work, drawing design or other document shall not relieve Seller of any of its obligations under this Order or constitute a waiver of any defects or nonconformities in any articles.

5. CHANGES

- (a) Buyer may, at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this Order in any one or more of the following: (1) drawings, design, specifications or other technical documents; (2) method of shipment or packing; (3) place of delivery, inspection or acceptance; (4) quantity of items; (5) delivery schedules; and (6) amount of Buyer-furnished property. Seller shall comply immediately with such direction and avoid unnecessary costs related thereto. The Seller acknowledges and agrees that certain changes in delivery schedule are normal. Seller further agrees that the cost of such changes is included in the fixed prices established herein. Accordingly, Seller shall not be entitled to a price adjustment hereunder for any change in delivery schedule when deliveries are rescheduled within 12 months of the original delivery date. Except for delivery schedule changes within the foregoing parameters, if any such change to the delivery schedule causes an increase or decrease in the cost of or time required for performance of any work under this Order, an equitable adjustment in the price and/or delivery schedule shall be made when justified by such change. However, no favorable adjustment of any kind shall be afforded to Seller with respect to changes made necessary by reason of defects or potential defects in any item for which Seller would be liable under the terms of this Order. Seller's claim for adjustment, stating the amount claimed and reasons therefore, shall be made in writing within 30 days from the date the change was ordered. Seller's failure to so assert its claim shall operate as a waiver. The Parties shall establish through negotiation whether or not any Buyer-directed change is one which in fact authorizes an equitable adjustment under this article, and if so, the nature of such adjustment. Failure to agree with respect to any such negotiations shall be a dispute and either party may pursue its remedies as provided herein. Pending resolution of such dispute, Seller shall diligently pursue the performance of the Order as changed.
- (b) No information, advice, approvals or instructions by Buyer's personnel shall affect Buyer's and Seller's rights and obligations hereunder, unless the same is in writing signed by an authorized Representative of the Buyer's Purchasing Department and which expressly states that it constitutes a change to this Order. Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Purchasing Representative, Seller shall take no steps to implement any such change.



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- (c) Seller shall make available for Buyer's examination relevant books and records to verify Seller's claim for adjustment.



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6. WARRANTIES

Seller warrants that all articles, materials, work or services furnished hereunder shall be free from defects in material and workmanship and that all items furnished will conform to applicable specifications, drawings, samples, and/or other descriptions. Unless manufactured pursuant to detailed design furnished by Buyer, Seller assumes design responsibility and warrants the items to be suitable for the purpose intended. The warranties of Seller together with its service warranties and guaranties shall run to Buyer, its assigns and each successive customer. In addition, Seller agrees to pass any warranty benefits to Buyer that Seller receives from its suppliers of any item ordered hereunder.

7. TOOLS, EQUIPMENT AND/OR MATERIALS.

Title to and the right of immediate possession of all Tools, Equipment, and/or Materials furnished or paid for as a direct charge or called out as a special item for use hereunder shall be and remain in Buyer. Buyer reserves the right to use all Tools, Equipment, and/or Material which are furnished, acquired or produced especially for use in the performance of this Order. Seller agrees to include a similar provision in all related subcontracts.

8. RISK OF LOSS, INDEMNIFICATION AND INSURANCE

- (a)** Whenever Seller shall, by virtue hereof, have in its possession property of Buyer, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer.
- (b)** Unless otherwise provided in this Order, Seller shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this Order at the F.O.B. point specified on the face hereof and upon such delivery title shall pass from Seller and Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or failure to comply with this Order.
- (c)** Seller shall be an independent contractor and agrees to indemnify and hold harmless Buyer, its officers, directors, affiliates and employees from any cost, damage, expense or other loss or liability incurred or paid, arising out of or on account of claims of or suits whether in law or in equity, which may be asserted or brought against any of the indemnified parties hereunder, for property damage or destruction, personal injury or death or any other damages of whatsoever nature or kind, including claims of consequential loss and breach of contract, as a result of the performance of the work, products, or workmanship, or the actions or omissions of the Seller or its employees, agents, or subcontractors, except for claims arising through the claimed sole and exclusive negligence of Buyer. Seller agrees to pay or reimburse Buyer for any expenditures, including reasonable attorney's fees and amounts paid in settlement, that Buyer may make or become liable for in connection with the investigation, settlement, defense or otherwise by reason of such claims or suits and if requested in writing by Buyer, will defend any such suits with counsel acceptable to Buyer at the sole cost and expense of Seller; Seller agrees to pay and to discharge any judgment, orders or decrees rendered or entered against any of the indemnified parties for any matter indemnified



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hereunder; Buyer may retain any money due or to become due to Seller sufficient to reimburse Buyer against any such claims, demands, judgments or liability; Seller shall also maintain at all times during performance of said work adequate workers' compensation insurance to cover all of its general and special employees engaged in such work and insurance to insure against claims for injury to or death of persons or destruction or damage to property (including Buyer's employees and property) which may arise from Seller's actions or omissions in the performance of said work by Seller; such insurance shall specifically include contractual liability coverage.

9. ASSIGNMENT RIGHTS

Assignment of this Order or any interest herein or any payment due or to become due hereunder, shall be void.

Payment to assignee of any claim under this Order shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Seller agrees that Buyer may assign its rights and/or delegate its duties in whole or in part.

10. TERMINATION FOR CONVENIENCE

Whether or not this Order relates to a Government contract, Buyer may terminate this Order in whole or in part in accordance with the Termination Clause set forth in Federal Acquisition Regulation (FAR) 52-249-2 and the policies and principles set forth in Part 49 of the FAR, as in effect on the date of this Order, which are hereby incorporated herein by this reference, except that in FAR 52-249-2: (1) the term "Contractor" shall mean "Seller", (2) the terms "Contracting Officer" and "Government" shall mean "Buyer", (3) the one-year period in Paragraph (d) is reduced to 60 days, and (4) the 90 day period in Paragraph (k) is reduced to 30 days. Failure of Seller to file such claim within such period shall constitute a waiver of such claim and will be the basis for a complete denial of the claim by Buyer. The provisions of this clause shall not limit or affect the rights or remedies of Buyer stated in other clauses of this Order or provided by law in the event of default or breach by Seller.

11. SUSPENSION OF WORK.

Buyer may order the suspension of all or part of the work for a period of ninety (90) days. Within such period, or any extension thereof to which the parties shall have agreed, Buyer shall either: (i) cancel the stop work order, (ii) let such order expire or (iii) terminate the work covered by such order pursuant to Clause 10 herein. If a stop work order is canceled or the period of any extension expires, Seller shall resume work. If the suspension has a material effect on cost or delivery, an equitable adjustment shall be made in price (excluding profit) and/or delivery. No claim shall be allowed unless made in an amount stated within twenty (20) days after the suspension ends. Buyer or his duly authorized representative shall have access to and the right to examine all pertinent books, records, and documents to substantiate such claim.



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12. DEFAULT

- (a) **Buyer** may terminate this order in whole or from time to time in part in any of the following circumstances:
- (i) if Seller refuses or fails to deliver the items or any installment thereof or perform any service required by this order strictly within the time specified herein or any extension thereof granted by Buyer in writing; (ii) the Seller fails to strictly comply with any other provision of this order, so fails to make progress as to endanger performance of this order in accordance with its terms, or repudiates this order; or (iii) if Seller suspends its business or becomes insolvent or subject to any law relating to bankruptcy, insolvency or relief of debtors. If Buyer requests assurance of performance, Seller shall provide same within seven (7) working days.
- (b) In the event of such termination, Buyer may purchase or manufacture similar items without further payment and/or require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer:
- (i) any completed items and (ii) such partially completed items and materials, parts, tools, plans, drawings, contract rights and other property and technical data as Seller has produced, acquired or used in performance of this Order. Buyer's liability to Seller shall be limited to payment to Seller at the contract price for items delivered pursuant to (i) above (equitably reduced if they are nonconforming), and for items delivered pursuant to (ii) above, the smallest of: (a) its fair market value, (b) its cost to Seller, or (c) the appropriate amount the settlement would have been, had the cancellation been pursuant to Clause 10 hereof.
- (c) **Seller** shall continue performance of this Order to the extent not terminated. Buyer's rights as set forth herein are in addition to all other remedies provided in law or equity. If after notice of termination of this Order under the provisions of this clause, it is determined that for any reason Seller was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to clause 10 hereof.

13. RELEASE OF INFORMATION

The Seller agrees not to make or cause to be made, or permit any of its subcontractors (including lower tier subcontractors) to make any public disclosure relative to this Order, including any information generated thereunder, such as but not limited to company periodicals, press releases, public lectures, theses and the like, without first obtaining prior written approval from Buyer.

14. COMPLIANCE WITH STATUTES AND GOVERNMENT REGULATIONS.

Seller warrants that in the performance of work under this Order, it has complied with or will comply with all applicable Tribal, federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder, including but not by way of limitation, the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Sec 201-219), the Walsh-Healey Public Contracts Act as amended (41 U.S.C. sec 35-45) or the Eight-Hour law of 1912 as amended (40 U.S.C. Sec. 324-326), Copeland Anti Kickback Act (41 U.S.C. Sec 51-54), Service Contracts Act of 1965 (41 U.S.C. Sec 351), Davis Bacon Act (40 U.S.C. sec 276 (a)), Contract Work Hours Standards Act of 1962 (40 U.S.C. Sec 327-



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330) as amended, Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Sec 651-678), Executive Order 11246 Equal Employment Opportunity. Seller shall indemnify and hold harmless Buyer from and against all losses, costs, fees and damages arising, directly or indirectly, from any actual or alleged failure by Seller to comply with any Tribal, federal, state or local statutes or other legal obligations.



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15. LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof to Buyer. Such notice shall include all relevant information with respect to such dispute. Nothing contained herein shall be deemed a waiver of Buyer's rights or remedies.

16. WAIVER AND SEVERABILITY

Any action or inaction by Buyer shall not constitute a waiver of any right or remedy herein. The failure of Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a present or future waiver of such provisions, nor in any way to affect the validity of this Order or any part thereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one (1) or more times) of any provision, condition or requirement of this Order shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. A Determination that any portion of this Order is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of this Order.

17. INSPECTION AND AUDIT OF BOOKS AND RECORDS

Seller grants to Buyer or his authorized representative, the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the price. This right may be exercised at any time subsequent to award. If such post award audit causes a decrease in the cost of or the time required for performance of this Order, an equitable adjustment in the prices and schedules of this Order shall be made to reflect such decrease and this Order shall be modified in writing accordingly. Failure of Buyer and Seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction.

18. PROGRESS REPORTING

Commencing at times and at intervals to be determined by Buyer, Seller shall submit a progress report and other associated charts to provide complete visibility of planned program tasks and progress against such tasks. Reports and charts shall be prepared upon formats supplied by or approved by Buyer. These reports shall be submitted once a month; however, they may be required on a weekly basis.

19. ORDER OF PRECEDENCE

In the event of conflict between these General Terms and Conditions, Special Terms and Provisions set forth herein (such as, but not limited to statements of work, etc.), specifications or drawings applicable thereto, the order of precedence shall be as follows: (1) Special Terms and Provisions set forth on the face of the Order and incorporated therein by reference; (2) General Terms and Conditions; (3) Specifications; and (4) Drawings. (Should any conflict arise, Seller shall contact Buyer for specific clarification.)



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20. PATENT PROTECTION

Seller shall conduct, at its own expense, the entire defense of any claim, suit or action alleging that, without further combination, the use or resale by Buyer, or any subsequent purchaser or user of items delivered hereunder, directly infringes any patents of the nation in whose territory the Buyer's, or subsequent purchaser's or user's principal office is located, but only on the conditions that: (a) Seller receives prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information reasonable available to Buyer for such defense; (b) said items are made according to a specification or design furnished by Seller or, if a process patent is involved, the process performed by the items is recommended in writing by Seller; and (c) the claim, suit or action is brought against Buyer or one indemnified by Buyer. Provided all of the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit or action or shall pay all damages and costs awarded by the court therein and, if the use or resale of such items are finally enjoined Seller, shall, at Seller's option: (i) procure for defendant the right to use or resell the items, (ii) replace them with equivalent non-infringing items, or (iii) modify them so they become non-infringing but equivalent.

21. CONFIDENTIAL DISCLOSURE

Seller shall protect as proprietary and keep confidential all proprietary information including but not limited to, designs, processes, drawings, specifications, reports, data, and other technical or business information and the features of all parts, equipment, tools, and other items furnished or disclosed to Seller by Buyer. Unless otherwise provided herein or authorized by Buyer in writing, Seller shall use such information and items, and the features thereof, only in the performance of this Order. Upon completion or termination of this Order, Seller shall, at Seller's expense make such disposition of all such proprietary and confidential information, items and goods as herein required or as may be subsequently directed by Buyer. Buyer shall have the right to audit all pertinent books and records of Seller in order to verify compliance with this clause. In all subcontracts for performance of work related to this Order, Seller shall include provisions which provide to Buyer the same rights and protections as provided in this clause.

22. PATENT RIGHTS

If this Order is a contract having experimental, developmental or research work as one of its purposes, and in consideration of the funds allocated for such purpose under this Order, all inventions, discoveries, and improvements conceived and/or reduced to practice in the development of the subject matter of this Order shall become the property of Buyer.

23. RIGHTS IN DATA

Seller hereby grants to Buyer the right to reproduce, disclose and use, and the right to authorize others to reproduce, disclose and use, in whole or in part, in any manner and for any purpose whatsoever in connection with Buyer's



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business, all or any part of the reports, designs, processes, drawings, specifications and other technical information and data developed, designed or used under this Order or any prior order for the same item.

24. APPLICABLE LAW

Seller understands that the Buyer is a wholly owned enterprise of the San Pasqual Band of Mission Indians of California, a federally recognized Indian Tribe, which is deemed to be a Sovereign Nation. Further, Seller hereby agrees to be bound by all rules and regulations of the San Pasqual Band of Mission Indians, Federal Laws and to the extent not inconsistent therewith, State Laws.

25. FEDERAL GOVERNMENT CONTRACTS

When a Federal Government Contract number or Federal Government is referenced in the Order, the terms and conditions for Federal Government Contracts referenced on the face of this Order and attached hereto shall apply to this Order.

26. QUALITY ASSURANCE

Seller guarantees that Seller shall, at all times, provide product(s) and/or service(s) that are in compliance with the specifications of this Order and all Industry Standards, and Rules and Regulations of any/and all Tribal, local, state and federal government regulatory agency.

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