

**EXHIBIT A - ADDITIONAL TERMS & CONDITIONS TO  
SUBCONTRACT VENDOR ORDER  
(FOR PRIVATE & NON-FEDERAL WORK)**

1. The acceptance of this Order is expressly limited to the terms herein and any additional or different terms suggested by Vendor are hereby rejected unless expressly consented to in writing by Alterman. Upon execution of the Order by Vendor, the Vendor will be deemed to have accepted the terms herein and the terms herein shall constitute a valid and binding contract which shall be governed by and construed according to the laws of the State of Texas (a Uniform Commercial Code State).

2. In the event of default by Vendor of any of the terms or conditions set forth herein, Vendor agrees to pay all costs resulting therefrom, including but not limited to reasonable attorneys' fees, costs of court, and any liquidated damages assessed against Alterman. This order is deemed performable in Bexar County, Texas. All suits, actions and causes of action in connection with this order shall be brought and maintained in Bexar County, Texas.

3. Vendor warrants that all material furnished under this Order (a) shall be of good quality and workmanship and free from defects, latent or patent; (b) shall be in strict compliance with the plans, specifications, addenda, and all contract documents; (c) shall produce capacities or meet design specifications and function (1) as called for in plans, specifications, and addenda, (2) as herein set forth, and (3) as published or warranted by the manufacturer for the equipment involved; (d) shall properly integrate with all other systems where integration is specified whether or not other systems are provided by Vendor; and (e) shall conform to all applicable Federal, State and Local codes and requirements. Vendor agrees to replace, without charge to Alterman, immediately upon notice by Alterman, any defective or non-conforming material and equipment and remedy any defects which may develop within one (1) year from date of acceptance by Owner, or within the guarantee period set forth in applicable plans, specifications, or contract documents, whichever is longer.

Vendor warrants that all materials furnished under this order are "change of century" or "Year 2000" compliant meaning that Century 1900 and 2000 values will be processed correctly without abnormally ending; and all date values processed by any applicable software shall contain the correct century and shall include at a minimum: date data century recognition; calculations that accommodate same century and multi-century formulas and date values; and date interface values that reflect the century. Materials will not contain any timer, clock, counter or other limiting design or routine which causes it to be erased, inoperable, or otherwise incapable of being used in the full manner for which it was designed after the occurrence or lapse of any triggering event.

4. Where applicable, this Order includes the services and costs of factory-trained engineers to start-up, check out, and test equipment and train owner's personnel as required by specifications. Vendor shall provide all supplies necessary to properly perform these services and shall bill for these services after they have been provided.

5. Vendor hereby expressly assumes the same responsibilities and obligations to Alterman as Alterman has assumed to the Prime Contractor or higher-tier contractor (if any), or Owner of the Project under the plans, specifications, and other contract documents, provided, however, that the assumption by Vendor of said responsibilities and obligations extends only insofar as same are applicable or related to any goods or services to be furnished by Vendor in connection with the Project. Copies of all contract documents specifying such obligations and responsibilities will be provided to Vendor within a reasonable time upon written request. However, notwithstanding the foregoing, Alterman shall have no responsibility to determine whether Vendor has actual awareness of the contents of such contract documents, and Alterman shall be entitled to assume such actual awareness, unless notified to the contrary in writing prior to the effective date of this order.

**6. VENDOR AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS ALTERMAN, PRIME CONTRACTOR OR HIGHER-TIER CONTRACTOR (IF ANY), AND OWNER (INCLUDING THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ANY CLAIMS, DEMANDS, LIABILITY, CAUSES OF ACTION, SUITS, JUDGMENTS, OR DEFENSE EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS OF COURT) FOR THE DEATH OR PERSONAL INJURY OF ANY PERSON OR FOR DAMAGE TO PROPERTY OF ANY PERSON ARISING FROM THE DELIVERY OF THIS ORDER OR THE PRODUCTS THEMSELVES.**

7. Vendor shall defend, protect, indemnify, and save harmless Alterman from and against all claims, liabilities, losses, damages, or expenses, including attorney's fees and costs of court arising out of any actual or alleged infringement of any patent or license covering any article purchased hereunder.

8. **TIME IS OF THE ESSENCE FOR THIS ORDER.** Alterman reserves the right to cancel without cancellation charges or any other charges, all, or any part of this Order, if not filled or completed within the specified time. Such right of cancellation shall not be deemed a waiver of any right reserved to Alterman herein or by law for any delay or failure to deliver as specified. If Alterman is assessed with backcharges or liquidated damages for delay to the project schedule caused by the Vendor, Vendor shall reimburse Alterman for the amount of such liquidated damages. Time is of the essence in the delivery and performance of this Order.

9. In the event of any breach of any of these terms or conditions of this Order by Vendor, or in the event of any proceedings by or against Vendor in bankruptcy or insolvency or for appointment of any receiver or trustee or any general assignment for the benefit of creditors, Alterman may, in addition to any other remedy provided by law or in equity or other right reserved to Alterman elsewhere in this Order, without any liability to Alterman on account thereof, by telegraphic or other written notice, terminate all or any part of this Order, procure the materials, equipment, or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the discretion of the Buyer, and Vendor shall be liable to pay to Buyer any excess cost

of other damages caused Buyer as a result thereof.

10. This Order is contingent upon approval by the architect and/or engineer or any other approving authority, and in the event of disapproval, is subject to cancellation by Alterman at no cancellation charge. Vendor shall submit 10 copies of submittal data, including shop drawings, catalog cut sheets, brochures, etc. within two weeks of receipt of this Order, if so required by this Order.
  11. Upon Alterman's request, Vendor shall perform an item-by-item specification review, and provide written responses in conjunction with product submittal data to insure compliance with all items of the specifications.
  12. Any deviation in material or equipment supplied with respect to the contract documents shall bear the architect's or engineer's written approval. In the event that any material or equipment supplied deviates from the contract documents, and does so in the absence of such written approval, Vendor shall remedy said deviation(s) or replace equipment to achieve conformance, and shall do so in a timely manner at no added expense to Alterman.
  13. All products shall be provided as fully assembled as possible and practical to ensure that job site assembly procedures will be kept to an absolute minimum. Any expense for excessive site assembly, fabrication or modification (other than that required for normal installation) will be billed to Vendor.
  14. Material shall not be released for shipment prior to notification of approval of submittal data and written confirmation from Alterman in the form of a release notice. This order is subject to cancellation by Alterman until written release and shipping date has been verified by manufacturer in writing.
  15. Shipping dimensions, weights, and requirements are to be provided prior to shipment and coordinated with Alterman during the submittal process. Shipping splits shall be determined by Alterman.
  16. Required delivery date will be specified by Alterman to conform to job construction schedule. Vendor must require transportation company to notify Alterman's Purchasing Agent at 210-496-6888 at least twenty-four (24) hours prior to delivery of all items. Failure to provide notice may result in refusal of shipment, and cost of re-delivery shall be at no additional expense to Alterman.
  17. All material shall be delivered weekdays between the hours of 8:00 a.m. and 12:00 p.m. or 1:00 p.m. and 3:00 p.m. unless otherwise specified. Deliveries will not be accepted between 12:00 p.m. and 1:00 p.m.
  18. Shipment shall be full freight allowed, F. O. B. job site. When indicated, shipment will be made by the method, carrier and/or routing specified in this Order. Any damages to material and/or equipment or loss of any kind occasioned in transit shall be borne by the Vendor notwithstanding the manner in which the goods are shipped and payment of transportation costs. All items of equipment requiring overhead unloading equipment shall be properly equipped with lifting eyes and delivered to job site in open top trailer or other means as acceptable to Alterman's Purchasing Agent. Failure to adhere to this item may result in a backcharge to Vendor for additional unloading costs incurred.
  19. Each item listed in this Order shall be clearly labeled with no less than 3/8" letters prior to shipment to job site. Failure to do so will result in backcharge to Vendor for identification of material by Alterman. Packing lists shall clearly reference this Order number, item number, and material description and shall show back orders, if any.
  20. In conformance with the requirements of the specifications, Vendor shall provide to Alterman ten (10) sets of Operating & Maintenance (O & M) manuals, Record Brochures and Drawings, Spare Parts, and Price Lists within thirty (30) days of shipment of this Order.
  21. Price of material in this Order is fixed. Material may be added to or deleted from this Order, prior to shipment, at the same unit price. No escalation charges shall be permitted unless expressly made a part of this Order.
  22. Vendor shall furnish billing breakdown by category to Alterman for approval prior to invoicing. On fixture orders, Vendor shall provide unit price breakdown. No payments shall be made until this item is complete.
  23. Invoices shall be submitted to:  
Alterman, Inc.  
7805 N Loop 1604 E  
Live Oak, Texas 78233
- Invoices shall show this Order number, item number, material description, and any back orders on component parts. Invoices shall include a current purchase order billing summary.
24. Terms of payment shall be as follows unless otherwise specified herein: Alterman shall pay Vendor within ten business days of Alterman's receipt of payment by Prime Contractor or higher-tier contractor (if any), or Owner of the Project, whichever is applicable, provided all current provisions of this Order have been met, all materials and/or services invoiced have been received in good condition and accepted by the Owner. Retainage may be

withheld from payment to the extent retainage is applicable in this Order.

25. Upon request, Vendor shall furnish all necessary lien waivers, affidavits or other documents required, in form satisfactory to Alterman, to keep Owner's premises free from liens or claims for liens, arising out of the furnishing of material or equipment herein. Such lien waivers, affidavit, or other documents so requested, may be conditioned upon receipt of payment for materials or equipment covered thereby, if payment has not been received by Vendor, but such condition shall be limited to amount owed for this Order only.

26. Vendor shall not assign or transfer this Order, or any part thereof, or any amount due and payable or to become due and payable hereunder, without written consent of Alterman.

27. This Order shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, administrators, executors and legal representatives, providing that nothing contained in this paragraph shall be construed so as to authorize Vendor to make any assignment to transfer prohibited by Paragraph 26 above.

28. If any term or provision of this Order is found to be invalid, it shall not affect the validity or enforcement of all remaining terms and provisions of this Order. Except as may be agreed upon in writing, the failure of Alterman to enforce any term of this Order shall not be construed as a waiver or relinquishment of Alterman's right to subsequently demand performance of such term.

29. This project has been designated as a Drug-Free Workplace and Vendor shall establish a Drug-Free Workplace Policy. At Vendor's expense, employees or agents of Vendor who are to be assigned to the project shall be screened for the presence of controlled substances and/or substance abuse. Only those employees or agents of Vendor who produce negative drug screens will be allowed on the project and Vendor shall demonstrate compliance with drug screening at Alterman's request.

30. Vendor shall be bound by all applicable federal, state, and local laws, regulations, Executive Orders, ordinances, statutes and acts. Vendor certifies that Vendor is in compliance with all certifications included in the attached EXHIBIT 1, "Compliance Certifications."

31. As this Order is considered a subcontract, Vendor agrees to the following requirements:

#### **A. Insurance Requirements**

1. Vendor shall, at its own expense, maintain in effect not less than the following coverages and limits of insurance, which shall be maintained with insurers, policy forms, and deductibles satisfactory to Alterman, Prime Contractor or higher-tier contractor, if any, and the Owner.

##### **a. Workers' Compensation and Employer's Liability Insurance**

State Workers' Compensation – coverage as required by law.

Employer's Liability with limits no less than each of the following:

\$500,000	each accident for bodily injury;
\$500,000	policy limit for bodily injury by disease;
\$500,000	each employee for bodily injury by disease.

This policy must include coverage for any state where materials, work, or supplies are provided for Alterman.

A Waiver of Subrogation shall be provided in favor of Alterman, Prime Contractor or higher-tier contractor, if any, the Owner, and any other parties required by the Contract Documents for bodily injury arising out of the Vendor's Work.

##### **b. General Liability Insurance**

Commercial General Liability coverage in the minimum limits required below, written on an Occurrence form, including Contractual Liability, and covering liabilities arising from premises, operations, independent contractors, products-completed operations, bodily injury, property damage, personal and advertising injury, and explosion, collapse, and underground ("x", "c" and "u") coverage if the Vendor's work involves such hazards. If the policy is in excess of an SIR (self-insured retention), the amount of such SIR must be clearly identified on the Certificate of Insurance. Alterman reserves the right to reject the application of such SIR, or require the Vendor to provide a bond on the SIR at no additional cost. Vendor will pay the amount of any SIR for any loss at no additional cost to Alterman, Prime Contractor or higher-tier contractor, if any, or Owner. If Vendor is selling/manufacturing products, Commercial General Liability coverage must include products liability.

The Limits of Liability for Bodily Injury and Property Damage under this section shall not be less than:

\$1,000,000 each Occurrence;  
\$2,000,000 Products/Completed Operations Aggregate;  
\$2,000,000 General Aggregate – per project

- i. Alterman, Prime Contractor or higher-tier contractor, if any, and Owner, and any other parties required by the Contract Documents shall be included as Additional Insureds (hereinafter referred to as “Additional Insureds”), by endorsement or otherwise, for liabilities arising out of ongoing work and completed operations of Vendor under this agreement and each purchase order.
- ii. The coverage provided to the Additional Insureds required hereunder and/or provided by Vendor shall apply on a primary and non-contributory basis. Any insurance policy(s) of Alterman, Prime Contractor or higher-tier contractor, Owner and/or any other additional insured entities as identified in the Prime Contract shall be excess to the policies required of the Vendor.
- iii. Cross Liability (separation of insureds) shall apply to the Additional Insureds.
- iv. The definition of “project” in relation to the General Aggregate limit shall mean each separate purchase order issued to Vendor.

**c. Automobile Insurance**

\$1,000,000 C.S.L. (Combined Single Limit per accident) and shall cover owned, hired and non-owned automobiles.

Policy shall include Alterman, Prime Contractor or higher-tier contractor, if any, Owner, and any other parties required by the Contract Documents as additional insureds.

**d. Excess/Umbrella Insurance**

Requirements of 1.a, b, and c may be satisfied using any combination of primary and excess/umbrella liability insurance.

Coverage provided by Umbrella and/or Excess Liability policies shall extend the limits of the underlying insurance, which shall include Employer’s Liability, General Liability, and Automobile Liability unless otherwise indicated on the Certificate of Insurance. Coverage provided will follow the same provisions, terms, definitions, exclusions, limitations, and conditions of the underlying insurance, including but not limited to additional insured provisions, waivers of subrogation, completed operations.

The amount of any SIR must be clearly identified on the Certificate of Insurance and Vendor will pay the amount of any SIR for any loss at no additional cost to Alterman, Prime Contractor or higher-tier contractor, if any, or Owner.

**e. Professional Liability Insurance (Errors and Omissions), if applicable**

Any Vendor with construction design responsibility shall provide the following additional coverage: An Architect’s and Engineer’s Professional Liability Policy with Limited Contractual Liability Coverage in favor of Alterman, Prime Contractor or higher-tier contractor, if any, and Owner and a deductible no greater than \$25,000 per claim. Any SIR must be clearly identified as such on the Certificate of Insurance and is subject to approval. This insurance shall be maintained for not less than the duration of any project and five (5) years following completion of construction. Retroactive date of such policy must be on or before the date Vendor began offering professional services to Alterman. Limit of liability shall not be less than \$2,000,000 Per Claim.

2. Modified Occurrence Liability Policies are not acceptable. Claims Made General Liability Policies are not acceptable. Vendor’s General Liability and Umbrella/Excess Liability policies shall include a provision or endorsement stating that such insurance applies to the liability assumed by Vendor under this Agreement.
3. Waivers of Subrogation are required for all policies in favor of the Additional Insureds and any other parties required by the Contract Documents.
4. Prior to commencement of work, Vendor shall file a certificate of insurance properly executed and signed by an authorized representative on behalf of the insurer(s) evidencing the above coverages and conditions to Alterman. Vendor shall maintain the required Insurance and Additional Insureds for the period of time for which the Vendor may be held legally liable for its work including during warranty periods of the Vendor’s work. Vendor further agrees, upon written request, to furnish copies of such policies.
5. All Insurance coverage provided by the Vendor shall be through acceptable insurance carriers licensed in the state(s) where work is being performed and with a minimum A. M. Best Company standard of A:VII or greater.

6. All Vendor's policies shall provide that written notice shall be given to Alterman at least thirty (30) days prior to termination, non-renewal, cancellation, change, or reduction of coverage in the policy. The certificate must have the following cancellation wording crossed out: "...ENDEAVOR TO..." and "...BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES."

**B. Indemnity:**

**TO THE FULLEST EXTENT PERMITTED BY LAW, THE VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE ADDITIONAL INSUREDS (INCLUDING THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ANY AND ALL SUITS, CLAIMS, ACTIONS, DAMAGES, LOSSES, FINES, PENALTIES, AND EXPENSES, OF WHATSOEVER KIND AND NATURE, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM (1) THE PERFORMANCE OF THE VENDOR'S WORK UNDER ANY PURCHASE ORDER OR (2) ANY ACTIVITIES OF THE VENDOR (OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, OR INVITEES), REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED OR IS ALLEGED TO BE CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH.**

**FURTHERMORE, VENDOR AGREES TO FULLY INDEMNIFY, AND HOLD HARMLESS THE ADDITIONAL INSUREDS (INCLUDING THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES) (1) WHERE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED OR ALLEGED TO BE CAUSED BY THE NEGLIGENCE OR FAULT OF ANY OF THE ADDITIONAL INSUREDS IN FAILING TO PROVIDE A SAFE PLACE TO WORK OR IN FAILING TO WARN OR SUPERVISE VENDOR (OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, OR INVITEES), EVEN THOUGH CAUSED WITHOUT THE NEGLIGENCE OR FAULT OF VENDOR, AND/OR (2) WHERE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE VENDOR'S USE (OR THE USE BY VENDOR'S AGENTS, EMPLOYEES, SUBCONTRACTORS, OR INVITEES) OF ANY TOOLS, MACHINERY, EQUIPMENT, RENTALS, AND/OR EQUIPMENT OPERATORS PROVIDED BY ANY ADDITIONAL INSUREDS, EVEN THOUGH CAUSED WITHOUT THE NEGLIGENCE OR FAULT OF VENDOR.**

In claims against any person or entity indemnified under this paragraph by an employee of the Vendor, the Vendor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Vendor or the Vendor's subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

- C. Requirements of Prime Contractor or Owner.** In the event greater limits of insurance or requirements are required by the Contract Documents, then Vendor agrees that those requirements are required of the Vendor.
- D.** Any reference to materials herein shall refer to labor and materials.
- E. Invoices.** Applications for monthly progress payments shall be in writing, if required, and shall state the estimated percentage of the work in this Order that has been satisfactorily completed. Vendor shall bill labor, materials, and sales tax as separate items on its invoice to Alterman. Payment by Alterman shall be in accordance with Paragraph 24 above.
- F. Certified Payrolls.** If required by the Owner or Prime Contractor, certified payrolls shall be provided in accordance with the provisions of the Contract Documents.
- G. Retainage.** Ten percent (10%) may be retained on each payment with final payment due when the work is completed and accepted by Owner or authorized representative and after final payment has been received by Alterman.
- H. Notice.** Notices may be made to either party by delivering by USPS certified mail to the addresses shown on the front of this Order. Notices to Alterman shall be delivered to: 7805 N Loop 1605 E, Live Oak, Texas 78233.

## EXHIBIT 1 - VENDOR'S COMPLIANCE CERTIFICATIONS

Unless otherwise exempt by applicable provisions of state and Federal laws, regulations and Executive Orders referred to herein, the Vendor certifies as follows:

- (a) NON-SEGREGATED FACILITIES (Applicable to orders totaling \$10,000 or more). Pursuant to Executive Order 11246, 41 CFR 60-1.8, and any applicable state regulations, Vendor does not and will not maintain segregated facilities.
- (b) EQUAL OPPORTUNITY CLAUSE (Applicable to orders totaling \$10,000 or more). Vendor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, or national origin. Vendor will post EEO notices in conspicuous places, available to employees and applicants and shall comply with the provisions of Executive Order 11246, Section 204 paragraphs (1) through (7), 41 CFR, 60-1.4 paragraphs (1) through (7), and any applicable state regulations.
- (c) AFFIRMATIVE ACTION COMPLIANCE PROGRAM (Applicable to orders totaling \$50,000 or more if the Vendor has 50 or more employees). Vendor shall have a written affirmative action compliance program for each of its establishments, as provided in 41 CFR 60-1.40, 41 CFR 60-2 as amended, and any applicable state regulations.
- (d) EQUAL OPPORTUNITY REPORTING (Applicable to orders totaling \$10,000 or more if Vendor has 50 or more employees). Vendor shall annually complete and file Government Standard Form 100, Equal Employment Opportunity employer Information Report EEO-1 as provided in 41 CFR 60-1.7 and any applicable state regulations.
- (e) AFFIRMATIVE ACTION FOR SPECIAL DISABLED & VIETNAM ERA VETERANS (Applicable to orders totaling \$10,000 or more). Vendor shall take affirmative action to employ, advance, and treat qualified special disabled and Vietnam Era veterans without discrimination and shall list all suitable employment openings with an appropriate office of the State employment service system. Vendor shall comply with the provisions of Executive Order 11701, Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, 41 CFR 60-250 and any applicable state regulations.
- (f) EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS & VETERANS OF THE VIETNAM ERA (Applicable to orders totaling \$10,000 or more). Pursuant to any applicable federal and state regulations, Vendor will annually complete and file Federal Contractor Veteran's Employment Report VETS-100.
- (g) AFFIRMATIVE ACTION FOR DISABLED WORKERS (Applicable to orders totaling \$2,500 or more). Vendor shall take affirmative action to employ, advance and treat qualified disabled workers without discrimination based upon their physical or mental disability. Vendor shall comply with the provisions of Executive Order 11758, Section 503 of the Rehabilitation Act of 1973, 41 CFR 60-741, and any applicable state regulations.
- (h) UTILIZATION OF SMALL BUSINESS CONCERNS & SMALL DISADVANTAGED BUSINESS CONCERNS. Vendor agrees to comply with Executive Order 11625 according to the provisions of state and federal regulations.
- (i) SMALL BUSINESS/SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (Applicable to orders totaling \$500,000 or more). Vendor shall establish and conduct a program according to the provisions of state and federal regulations that will promote small and small disadvantaged business concerns.