

DRAFT SALES AGREEMENT

1/4/2018

In Reply Refer to: SA17-138

Noble Supply & Logistics
302 Weymouth Street
Rockland MA 02370

ATT: Nick Liolios

Con Edison of New York, Inc., on behalf of its affiliate, Orange and Rockland Utilities, Inc., agrees to sell and Noble Supply purchase the following items subject to the terms and conditions below:

| <u>Description</u> | <u>UOM</u> | <u>Unit Price</u> |
|---|------------|--------------------|
| 50 KVA CSP 1BUSH 13.2GY/7.6 - 120/240 (Old M/S # 1010107) | Each | \$1,155.19 |
| TOTAL AMOUNT D | | \$86,639.25 |

- 1) This Sales Agreement ("Contract") contains the entire agreement along with the Standard Terms and Conditions for Non-Repetitive Sale of Goods between Con Edison and the Purchaser. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract will not be affected thereby. Any prior or contemporaneous, oral or written, understandings or agreements relating to the subject matter of the Contract are merged herein. No modifications of or amendment to the Contract will be valid or binding unless in writing and signed by an authorized representative of Con Edison.
- 2) The goods sold hereunder are furnished "AS IS" AND "WHERE IS." Any description of the goods contained in any document relating to this sale is for reference purposes only and is not intended to be construed as a warranty relating to condition or completeness.
EXCEPT FOR WARRANTY OF TITLE, NO WARRANTIES WILL APPLY, WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR WARRANTIES BASED ON COURSE OR DEALING OR TRADE USAGE.
- 3) The Buyer agrees to defend, indemnify, and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons or damage to property, including the property of Con Edison resulting in whole or in part, from, or connected with, the performance of the Contract by the Purchaser, any subcontractor hereunder, their agents, servants or employees, or the possession, transportation, storage, installation, maintenance, operation, disposition, or other use of the goods purchased hereunder.
- 4) Purchaser will remove the released goods promptly after execution of this contract. Purchaser acknowledges and agrees that failure to remove goods within five business days after the signing of this contract will, at the option of Con Edison, be deemed to constitute an abandonment of the goods purchased hereunder and a rescission of the contract, entitling Con Edison on two day's written notice to dispose of the goods in any manner it sees fit. Purchaser will have no recourse against Con Edison in connection therewith and hereby waives any right or remedy it may have in law or in equity for recovery of the property, or any claim for damages.

- 5) Unless otherwise specified in the Contract, the title to and risk of loss of all goods released hereunder will pass to the Purchaser upon removal by the Purchaser from the Con Edison facility at which the goods are tendered. Con Edison will not be liable to the Purchaser if this sale cannot be completed as a result of any loss of or damage to goods prior to their removal by the Purchaser.
- 6) Con Edison will have the right to set-off against any sums due the Buyer hereunder any claims Con Edison may have against Buyer under the Contract or any other contract between Con Edison and the Purchaser without prejudice to the rights of the parties in respect of such claims.
- 7) The Contract will be construed, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of New York. Contractor irrevocable submits to the jurisdiction of the court of the state of New York with respect to any case or controversy arising out of this contract. Both parties waive the right to trial by jury.
- 8) Con Edison has a policy of environmental excellence and requires those it contracts with to perform accordingly. The Purchaser is required to assure that all vehicles, including those of subcontractors used, are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, but not limited to, hydraulic systems on each vehicle. The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container on a vehicle while on Company property. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point. The driver will be required to eliminate the leak or spill before leaving Company property. The Purchaser will be required to reimburse Con Edison for all costs associated with the cleanup or leaks or spills.
- 9) You are requested to sign the Purchaser Acceptance portion of the Material Sales Approval and Release Form (Attachment I) and wire your payment using either Fed Wire or ACH (Automated Clearing House).
- 10) NOTE: Our preferred method of payment is ACH.

Wire information: Bank: JP Morgan Chase Bank
 ABA Number: 021000021
 Account Number: 657591686
 Account of: CECONY Miscellaneous Accounts Receivable

The bank address is:
 JP Morgan Chase Bank
 One Chase Plaza
 New York, NY 10005

- 11) Please write the Sales Agreement number in the wire transfer addendum field. Upon confirmation of your payment, we will furnish a copy of the Material Sales Approval and Release Form acknowledging payment, which must be presented to remove the material described above.

BUYER'S SIGNATURE (Authorized Officer) SELLER'S SIGNATURE

Noble Supply & Logistics
 Title
 Date

ROY ADAMS
 Section Manager
 Phone: 212-460-4362

MATERIAL SALES APPROVAL AND RELEASE FORM

DESCRIPTION OF MATERIAL SOLD:

75 50 KVA CSP 1BUSH 13.2GY/7.6 - 120/240 (Old M/S # 1010107)

LOCATION OF MATERIAL AND CONTACT:

Contact: Nixon Au (212-460-6499)

TO BE COMPLETED BY BUYER

| |
|---|
| BUYER ACCEPTANCE: |
| |
| ----- |
| SIGNATURE & DATE |
| |
| ----- |
| PRINT NAME |
| |
| MATERIAL REMOVAL: |
| PLEASE CHECK ONE |
| MATERIAL WILL BE REMOVED BY BUYER |
| MATERIAL WILL BE REMOVED BY TRUCKER: |
| NAME OF TRUCKER: |
| |
| ----- |
| |

TO BE COMPLETED BY CON EDISON

| |
|-----------------------------------|
| PAYMENT RECEIVED BY: |
| |
| ----- |
| SIGNATURE & DATE |
| |
| REMOVAL VERIFICATION: |
| MATERIAL HAS BEEN REMOVED: |
| |
| ----- |
| SIGNATURE & DATE |
| |
| ----- |
| EMPLOYEE NUMBER |
| |

SIGN AND RETURN THIS FORM

DRAFT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

STANDARD TERMS AND CONDITIONS

FOR

NON-REPETITIVE SALE OF GOODS

May 19, 2016

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STANDARD TERMS AND CONDITIONS

1. **Definitions.** The following terms as used herein shall have the meanings stated:

- "Con Edison" - Consolidated Edison Company of New York, Inc.
- "Buyer" - The party contracting to purchase goods from Con Edison.
- "Material Sales Approval and Release Form" - A document issued by Con Edison releasing goods for pickup by Buyer.
- "Contract" - The agreement for purchase of goods by Buyer from Con Edison consisting of the Sales Agreement, the documents specified therein, and all documents incorporated by reference in the specified documents, including these Standard Terms and Conditions. (The words "hereof," "herein," "hereto," and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.)

2. **Contract Formation.** Acceptance of the Buyer's offer is expressly conditioned upon the Buyer's assent to the terms and conditions hereof. The Buyer shall be bound by the Contract and its terms and conditions upon the signature of the Sales Agreement or other writing manifesting acceptance of the Buyer's offer. No terms or conditions stated by the Buyer in its offer, purchase order or other correspondence shall be binding upon Con Edison if different from or in addition to the express provisions of the Contract.

3. **Amendments.** No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

4. **Firm Price.** Unless otherwise expressly and specifically provided in the Contract, the prices stated in the Contract are firm and are not subject to change.

5. **Payment.** Within five days after issuance of the Sales Agreement, Buyer shall pay to Con Edison the full amount specified therein.

Buyer agrees that should suit be instituted to collect any unpaid balances due and owing under the Contract, Buyer shall reimburse Con Edison for its costs and expenses of collection, including, but not limited to, reasonable attorneys fees.

6. Taxes. The price does not include any federal, state or local sales, use, or other similar tax which may now or hereafter be applicable to the sale by Con Edison of the goods furnished hereunder, and Buyer agrees to pay or reimburse Con Edison for any such tax. Con Edison will accept properly completed exemption certificates for any tax from which the Buyer claims exemption.

7. Buyer's Performance. Con Edison shall issue the Material Sales Approval and Release Form after receipt of Buyer's payment in full. Buyer shall remove the released goods promptly after its receipt of the Material Sales Approval and Release Form. Buyer acknowledges and agrees that failure to remove goods within five business days after such receipt shall be evidence of and shall constitute abandonment of the goods purchased hereunder and rescission of the Contract, entitling Con Edison on two days' written notice to dispose of the goods in any manner it sees fit. Buyer shall have no recourse against Con Edison and hereby waives any right or remedy it may have in law or in equity for recovery of the property, or any claim for damages.

8. No Warranties. The goods furnished by Con Edison are sold as is, where is. Any description of the goods contained in any document relating to this sale is for reference purposes only and is not intended to be construed as a warranty relating to condition or completeness. EXCEPT FOR WARRANTY OF TITLE, NO WARRANTIES SHALL APPLY, WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR WARRANTIES BASED ON COURSE OF DEALING OR TRADE USAGE.

9. Assignment. The Buyer shall not assign the Contract or any of its rights under the Contract without the prior written consent of Con Edison, and any assignment made without such consent shall be void.

10. Indemnification. The Buyer agrees to defend, indemnify and save Con Edison, its directors, trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons or damage to property, including the property of Con Edison, resulting, in whole or in part, from, or connected with, the performance of the Contract by the Buyer, any subcontractor hereunder, their agents, servants or employees, or the possession, transportation, storage, installation, maintenance, operation, disposition, or other use of the goods purchased hereunder.

11. Insurance. The Buyer shall maintain, at its own expense, until completion and acceptance of performance hereunder: Workers' Compensation Insurance as required by law; Employers' Liability Insurance covering accidents and occupational diseases; Comprehensive (also called Commercial) General Liability Insurance, on an "occurrence" basis, with Con Edison as an additional insured, including Contractual Liability and, at least for one year after completion of performance hereunder, Products/Completed Operations Liability Insurance; and Comprehensive Automobile

Liability Insurance. These insurances shall be in amounts sufficient to insure the risks assumed by the Buyer under the Contract, but not less than the amounts of such insurances carried generally by companies of the Buyer's size engaged in similar business. The Buyer shall promptly submit certificates of insurance indicating that the required insurance policies have been issued and are effective and may not be cancelled or their limits reduced without ten days' written notice by the insurers to Con Edison. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. The Buyer's obligations under the Contract shall not be limited by Con Edison's specifying or approving the insurance coverage to be maintained by the Buyer.

12. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by written notice to the Buyer terminate the Contract, in whole or in part, without liability to the Buyer. Termination shall not relieve the Buyer of any obligation arising out of released goods prior to termination. In no event shall Con Edison be liable to the Buyer for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other purchases.

13. Cancellation for Default. In the event the Buyer is in default of any of its obligations under the Contract, Con Edison shall have the right, by written notice to Buyer, to cancel the Contract, in whole or in part, for such default. Buyer shall be deemed to be in default hereunder if Buyer is in default of any of its obligations under the Contract or Buyer by statement or conduct indicates that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof). In the event of cancellation for default hereunder, Con Edison shall have all rights and remedies provided by law and under the Contract. In addition, in such event Con Edison may retain from any deposit or other security an amount which Con Edison determines is adequate to cover all damage resulting from Buyer's default. In the event that Buyer demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 12 hereof, and the rights and obligations of the parties shall be governed accordingly.

14. Title and Risk of Loss. Unless otherwise specified in the Contract the title to all goods released hereunder shall pass to the Buyer upon removal by the Buyer from the Con Edison facility at which the goods are tendered. Con Edison shall not be liable to the Buyer for any loss of or damage to goods prior or subsequent to removal by the Buyer.

15. Compliance with Laws. The Buyer shall comply with all federal, state and local laws, executive orders, regulations and rules applicable at the time of performance.

16. Set-off. Con Edison shall have the right to set-off against any sums due the Buyer hereunder any claims Con Edison may have against Buyer under the Contract or

any other contract between Con Edison and the Buyer without prejudice to the rights of the parties in respect of such claims.

17. Conflicting Documents. To the extent, if any, that the documents that may be incorporated in the Contract conflict with the provisions of these Standard Terms and Conditions, these Standard Terms and Conditions shall take precedence and govern.

18. Rights and Remedies are Cumulative. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law.

19. Headings. The headings of the Articles of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

20. Waiver. Neither the acceptance of any payment for goods nor any performance by Con Edison of any of the Buyer's duties or obligations nor any failure of Con Edison to insist on strict performance by the Buyer of the Contract terms or to otherwise assert its rights in any one or more instances shall constitute a waiver by Con Edison of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of said breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

21. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 hereof, Amendments, contains the entire agreement between Con Edison and the Buyer. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous, oral or written, understandings or agreements relating to the subject matter of the Contract are merged herein.

22. New York Law. The Contract shall be construed, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of New York without regard to its conflict-of-laws principles.

23. Protection of Persons and Property; Notice of Accidents

- A. When the Buyer's performance hereunder entails the presence of Buyer on Con Edison's premises for any purposes, the Buyer shall ensure at all times that every reasonable precaution is taken to protect persons and property. The Buyer shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Con Edison's premises, to observe and comply with all fire, safety, hazard, "No Smoking", and other rules and

regulations prescribed by Con Edison or legally in effect at the time. The Buyer shall promptly report in writing to Con Edison all accidents whatsoever, arising out of or in connection with any performance of the Contract on or adjacent to Con Edison's premises, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage to property is caused, the Buyer shall immediately orally report the accident to Con Edison.

- B. If at any time or place a third party suffers personal injury (including death) or property damage for which the Buyer is legally liable, no provision of the Contract shall be construed as an agreement by Con Edison to assume all or any part of such liability or, if Con Edison is named or joined in any legal action or proceeding in connection therewith, to preclude, prejudice or limit Con Edison's right to receive indemnification or contribution from the Buyer.

24. Limitation of Liability. Neither Con Edison nor its employees or agents shall be liable to the Buyer in contract, tort (including negligence and strict liability) or otherwise for loss of use of goods or facility, expenses involving cost of capital, loss of profits or revenues, cost of repair, claims of any customer of Buyer, or any special, incidental, indirect or consequential loss or damage whatsoever. In any event, the total cumulative liability of Con Edison, whether in contract, tort (including negligence and strict liability) or otherwise, arising out of this Contract shall be limited to the total price paid by Buyer under this Contract.

25. Submission to Jurisdiction/Choice of Forum

- A. The Buyer hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. The Buyer agrees that service of process on the Buyer in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to the Buyer at the address shown in the Contract or at the address of any office actually maintained by the Buyer or by actual personal delivery to the Buyer. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.
- B. The Buyer consents to the selection of the New York State and the United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract.