

ASARCO LLC – PURCHASE ORDER TERMS AND CONDITIONS (SERVICES, 1/2014)

- 1. Governing Terms:** This Purchase Order constitutes the sole, exclusive and entire agreement by and between Company and Contractor. The terms “Company” and “Contractor” shall include their respective officers, employees, agents, contractors, suppliers, material-men, successors, assigns and affiliates. Any modifications to this Purchase Order must be in writing and signed by both parties. If any provision herein is held to be invalid, the remaining provisions shall survive and remain in full force and effect. This Purchase Order shall control in the event of any inconsistency in any document referred to or incorporated herein, or provided by the Contractor. The terms of this Purchase Order may not be supplemented, amended, modified or otherwise changed except by a writing executed by all parties hereto. A waiver by Company of any right or failure to insist on strict performance under this Purchase Order shall not be construed as a waiver for any subsequent opportunities for performance or to enforce any rights or remedies under this Purchase Order. Initiation of services constitutes Contractor’s acceptance of all terms and conditions of this Purchase Order.
- 2. Status And Responsibility Of Contractor And Its Personnel:** Contractor shall perform services under the Purchase Order as an independent contractor and consultant to the Company and not as an employee of the Company. Contractor shall be responsible for providing, at its own expense, disability, unemployment and other insurance, worker’s compensation, training, permits and licenses for itself. Contractor is responsible to provide all material, tools and equipment in order to fulfill its obligations under this Purchase Order. Contractor agrees to accept exclusive liability for the payment of income or payroll taxes or contributions for unemployment insurance or old age pensions or annuities or social security payments which are measured by the wages, salaries or other remuneration paid to Contractor and to reimburse the Company for such taxes or contributions which the Company may be compelled to pay. Contractor further agrees to comply with all valid statutes and administrative regulations respecting the assumption of liability for such taxes and contributions. The relationship created hereby between Contractor and the Company is that of an independent contractor and shall not be construed or deemed to be that of an employer/employee relationship, joint venture or partnership. Contractor is not authorized to act as an agent of the Company or for, or on behalf of, the Company in any capacity whatsoever, and Contractor shall not in any manner advertise, represent, or hold itself out as acting or being authorized to so act. Except as otherwise specified herein or required by law, the services to be rendered for or on behalf of the Company as provided for in this Agreement, shall be subject to the control of the Company only to the extent of the result to be accomplished by the work and not as to the means and methods used by Contractor for accomplishing the result. If for any reason Contractor’s employees or any of its subcontractor’s employees or agents acquire a status imposing liability on Company for employer’s contributions or taxes under the Federal Social Security Act or under any State Unemployment Insurance, Old Age Benefit, or similar acts, or any pension, savings or profit sharing funds or benefit programs, Contractor shall be exclusively liable for, and shall indemnify, defend and hold harmless Company against any claims for such benefits.
- 3. Payment And Invoice:** Payments shall be made by Company to Contractor net thirty (30) days after the date on the invoice or as otherwise specified on the face of this Purchase Order. Unless otherwise specified in the Purchase Order, payment shall only become due on the date all ordered services have been received, approved and accepted by Company, and Company has received a valid invoice from Contractor, each noting the services provided. Unless otherwise indicated by Company on the face of this Purchase Order, Contractor agrees to quote and invoice Company a total delivered price, which shall include all taxes and fees (if any).
- 4. Obligations of Contractor:** Contractor shall at all times perform its obligations under the Purchase Order with that degree of professional diligence normally expected of contractors on projects of a similar nature, in the same locale and during the same time frame. Contractor shall perform the services in compliance with all applicable local, state and federal laws, statutes, codes, ordinances, rules and regulations in effect at the time services are provided. The Company is relying upon Contractor’s skill and expertise to complete the services pursuant to the requirements of this Purchase Order. Contractor warrants that all services shall conform to the specifications, drawings, demonstrations, design or other descriptions agreed to by Contractor and Company. If any of the services performed are defective or otherwise not in conformity with the requirements of this Purchase Order, Company, in addition to its other rights including the right to recover direct, consequential, incidental or exemplary damages (including business and economic losses), attorney’s fees and costs, may require proper correction, replacement or completion thereof at Contractor’s expense.

5. **Termination:** The Company, upon five (5) days written notice (“Termination Notice”) to Contractor, may, in its sole and absolute discretion, terminate this Purchase Order in whole or in part. Upon receipt of such Termination Notice, Contractor shall, unless the Termination Notice directs otherwise, immediately discontinue the services under this Purchase Order. If Contractor is terminated, Contractor will be compensated through the date of termination as set forth in the Termination Notice for the portion of the services actually and properly performed under the Purchase Order. No payment for unperformed services will be made. By exercising its right to terminate, the Company does not waive any of its rights, remedies or damages against Contractor arising out of any services performed prior to the termination, including any breach or default of this Purchase Order. In no event may Contractor recover from Company any damages, direct, consequential or otherwise or lost profits arising from termination of this Purchase Order.
6. **Liability And Indemnification:** Contractor agrees to indemnify, defend and hold harmless Company and its affiliates, directors, officers, employees, representatives and agents from and against all claims, suits or demands of any kind and description, and from and against all alleged or actual damages, loss, fines or penalties which Company or Company’s property may sustain, incur, suffer or receive and which arise or allegedly arise in whole or in part from Contractor’s performance under this Purchase Order or from any other conduct, actions or inactions by Contractor. Contractor’s indemnity obligations include, but are not limited to payment of all judgments, legal fees and expenses incurred by Company. Company’s rights and Contractor’s indemnity obligations hereunder shall apply with full force and effect even if Company or any third party is or may be liable or responsible in part for the claim, suit, demand, damage, loss, fine or penalty sustained, incurred, suffered, or received. However, Contractor’s indemnity obligation shall apply for the amount and to the extent that Contractor is at fault for or the cause of such loss or damages. Company rights and Contractor’s obligations hereunder shall survive the expiration or termination of this Purchase Order.
7. **Intellectual Property Liability:** Contractor agrees to indemnify, defend and hold harmless Company against any claims, suits, actions or proceedings involving the infringement of intellectual property rights, and which arise from or relate to the services provided hereunder. Contractor agrees to pay for any costs of such defense, including legal fees.
8. **Compliance With All Laws And Environmental Safety And Health Policy:** Contractor acknowledges that compliance with laws and providing a safe and healthy workplace and protection of the environment is Company’s priority and agrees to abide by that priority in all of its actions that relate to Company. Contractor agrees, represents and warrants in providing services hereunder that it has copies of and will fully comply with all applicable federal, state and local laws, rules, regulations, standards and other governmental requirements including but not limited to: the Federal Occupational Safety and Health Act (“OSHA”), the Federal Mine Safety and Health Act (“MSHA”), and the statutes enforced by the U.S. Environmental Protection Agency, their state and local equivalents and all regulations, policies and orders issued by or pursuant to them (collectively, the “Acts”). The inclusion in this Purchase Order of any specific laws or regulations does not and is not intended to relieve Contractor of its obligation to comply with all laws, rules, statutes, regulations and ordinances. Contractor further agrees that any of its officers, agents, employees, contractors or subcontractors that enter Company’s premises will be trained, certified and/or licensed both as required by such laws and Acts and in the methods and procedures for compliance with them. Contractor acknowledges and agrees that it has instituted a policy that mandates compliance with this provision.
9. **Environmental Health And Safety Provisions:** Contractor agrees to comply with all of Company’s safety, health and environmental rules and procedures relating to work performed on, and access and use of, Company’s facility, including but not limited to the following general safety and health and environmental provisions:
 - a. Contractor shall designate a job site representative to be its supervisor responsible for compliance with all laws, and that person shall be responsible for promoting health, safety and accident prevention, environmental protection, compliance with applicable laws, rules and regulations and coordinating such activities with Company.

- b. Contractor shall convey in writing to its employees and employees of its subcontractors that they must notify Contractor and Company's representative immediately of any environmental, safety or health concerns or hazards or problems they may have or encounter in performing this Purchase Order or any of its requirements. Contractor agrees to evaluate the concern, take protective actions if needed and notify Company of such concerns and actions in writing.
- c. Contractor agrees to limit its travel on Company's facilities solely to that necessary for performing this Purchase Order and require that its employees, agents and subcontractors be accompanied by Company's personnel, unless a particular employee, agent or subcontractor is authorized in writing to be unaccompanied.
- d. Contractor agrees to become familiar with and train its employees and those of its subcontractors in the characteristics of the site, including, but not limited to, any hazards, restricted areas, protective measures and applicable emergency and evacuation procedures.
- e. Contractor agrees to provide and utilize safe, functional equipment and non-hazardous materials and to possess or obtain, prior to entering Company's site, any training, testing, licenses or certifications that are necessary, appropriate or required for utilizing all equipment, materials and tools used to perform this Purchase Order. Contractor also agrees to maintain such equipment, materials and tools in good order and working condition, and utilizes personal protective equipment whenever necessary or required by law or Company's policies.
- f. Contractor agrees to be subject to Company's contract compliance monitoring, but also agrees that such monitoring or the lack thereof does not relieve Contractor of any duties and/or obligations under this Purchase Order or applicable laws.
- g. Contractor agrees to obtain Company's written approval of its subcontractors and their employees before utilization on Company's premises. Contractor agrees that its subcontractors will meet the same safety and health and environmental requirements and provide the same information to Contractor as Company requires of Contractor. Contractor in turn must provide copies of all such information to Company.
- h. Contractor shall promptly advise Company of any investigation or inspection by any federal, state or local governmental agency in any way related to or concerning Company.
- i. Contractor shall immediately notify Company (and if requested provide a detailed written report) of every accident or incident involving injury to personnel or occupational illness or damage to Company's property or environmental incident or event occurring in connection with this Purchase Order and agrees to assist Company with any investigation thereof. Contractor also agrees to record and report all required information by and to all appropriate federal, state and local regulatory agencies and to provide notice of and copies of such reports and information to Company. Contractor shall also report to Company employee days and hours worked while on Company's premises.
- j. Contractor agrees to provide Company with its written environmental, safety and health programs and documents applicable to its presence on Company's facility and to provide any requested additional documentation or certification.

10. Effect Of Company's Voluntary Actions:

- a. Contractor's duties of indemnity towards Company pursuant to Paragraph 6 shall apply with full force and effect even if Company provides Contractor with safety, health and environmental information, training, materials, inspections, services, or otherwise voluntarily assists Contractor in protecting people and the environment and meeting Contractor's compliance obligations hereunder.

- b. Contractor acknowledges that it is fully and solely responsible for compliance with all laws and regulations and that any assistance provided by Company as referenced herein is provided voluntarily and solely for the purposes of promoting the parties' mutual interest in health, safety and the environment.
- c. Any actions by Company in volunteering environmental, safety and health information, training, materials, equipment and services shall not be alleged to, nor constitute a change in, or diminish or relieve Contractor of any contractual or governmental responsibilities in these areas and shall not constitute, nor be alleged by Contractor in any inspection, investigation or legal proceeding to constitute control, supervision or direction of their employees.

- 11. Environmental Safety And Health Violations And Assessments:** Contractor acknowledges that violations by Contractor of health, safety, environmental and other statutory and regulatory laws and authority may result in the imposition of civil and/or criminal fines and penalties or in other damage and loss to both Company and Contractor. Contractor agrees that Company shall have the right to assess or back-charge Contractor an amount equal to that which the Acts are authorized to assess or propose for violations whenever Company determines that Contractor has committed such a violation. Company also shall have the right to inspect or audit Contractor's records, conduct or actions related to this Purchase Order for the purpose of monitoring Contractor's compliance with and for enforcing the terms of this provision. Company's remedies against Contractor for violations of the environmental, health and safety provisions of this Purchase Order shall not be limited to those set forth above.
- 12. Insurance:** If this Purchase Order requires the employees, officers, agents or subcontractors of Contractor to enter, or results in any of them entering Company's premises, facility or site or the Company otherwise requires it, Contractor shall: (a) carry Liability Insurance in the amount of two million dollars (\$2,000,000) and such other coverage amount as may be specified by Company in an addendum hereto; (b) also carry Workmen's Compensation Insurance as required by the laws of the state in which the work is performed; and (c) immediately furnish to Company at the time of receipt of this Purchase Order a certificate or other evidence of such insurance identifying Company as an additional insured. All of Contractor's policies shall contain an endorsement waiving the Insurer's right of subrogation against the Company.
- 13. Assignment:** This Purchase Order will be binding upon and enforceable only by the parties, their respective successors and permitted assigns. Contractor shall not assign or transfer this Purchase Order or any moneys due or to become due to it hereunder, without the prior written consent of Company, which consent may be withheld in the Company's sole discretion. Any assignment or transfer without the prior written consent of the Company shall be null and void.
- 14. Claims:** In the event Contractor sustains a delay, damage or loss of any kind or encounters a change or unexpected condition during performance of this Purchase Order, Contractor's sole remedy, if any as applicable against Company shall be an award of an extension of time for performance of this Purchase Order. In no event may Contractor recover any monetary relief from Company, including but not limited to consequential damages or otherwise.
- 15. Disputes:** Any dispute regarding this Purchase Order shall first be submitted to non-binding mediation before a mediator acceptable to the parties. If the parties cannot agree upon a mediator or if the dispute is not resolved within thirty (30) days of a request for mediation, then the dispute shall be resolved by binding arbitration to occur in the city closest to Company's facility originating this Purchase Order. Such arbitration shall be conducted by one (1) arbitrator under the Rules of Commercial Arbitration of the American Arbitration Association. A demand for arbitration may be made upon expiration of the time period set forth above. The resulting decision of the arbitrator shall be final and binding on the parties. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. No request or demand for mediation or arbitration shall be made after the date on which the applicable statute of limitations would expire.
- 16. Governing Law:** This Purchase Order, including performance and all disputes hereunder, shall be governed by the laws of the state or commonwealth in which Company will receive the beneficial use of the services.

17. Notice: Any written notice required under this Purchase Order shall be sent to Company's and Contractor's address appearing on the face of this Purchase Order or to such other address as either party shall have specified by notice in writing to the other party.

18. Right To Audit: Contractor shall establish and maintain a reasonable accounting system, which enables ready identification of Contractor's cost of services and use of funds. Company may audit Contractor's records any time before three years after final payment to verify Company's payment obligation and use of Company's funds. This right to audit shall include subcontractors in which services are subcontracted by Contractor. Contractor shall insure Company has these rights with subcontractor(s).

