



THE DOW CHEMICAL COMPANY

WILLARD H. DOW CENTER
MIDLAND, MICHIGAN 48674

2000 Willard H. Dow Center
November 29, 1989

Mr. Ira Dinitz
Insurance Liability Specialist
Office of Nuclear Reactor Regulations
Mail Stop 12 E 4
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

NUCLEAR ENERGY LIABILITY
POLICY NOS.: NF-160; MW-155; NW-75

Dear Mr. Dinitz:

This letter will confirm to you that The Dow Chemical Company will be bound by the terms and conditions that would have applied had the captioned policies been in place as regards our nuclear liability.

Enclosed is a copy of our Nuclear Indemnity as regards contractors working on the Dow site. You will note we not only protect them from damage to our property, but also from damages caused to third parties as outlined in Section 170 of the Atomic Energy Act of 1954, as amended.

We realize this task has been difficult for both of us; however, we hope with the above statement and the enclosed Indemnity Agreement, that we will be able to obtain your approval to become a self-insurer of our nuclear risk.

We await your reply.

Very truly yours,

Linda S. Holder
Liability Insurance Assistant
Corporate Risk Management

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cc: Harrison T. Plum, Jr., The Dow Chemical Company, Midland, MI

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STANDARD TERMS AND CONDITIONS FOR TECHNICAL SERVICES

A. Applicable Terms

Sale of any services or related material covered by this Contract is conditional upon the terms contained herein. Any additional or different terms proposed by Purchaser will not be binding upon Company unless accepted in writing by Company's authorized representative. Any order for, any statement of intent to purchase hereunder, or any direction to proceed with the work shall constitute assent to Company's terms and conditions.

B. Standards and Remedies

Company will perform work under this Contract in accordance with generally accepted engineering and technical standards. If, within a period of twelve (12) months from the date of completion of the work, it is determined that Company has failed to comply with this under-taking, Company will reperform the noncomplying portion of the work in accordance with the terms of this Contract. Such reperformance shall be Purchaser's exclusive remedy and shall be Company's sole obligation. Company shall not be responsible for the use of or inability to use any information furnished by Company in conjunction with the work performed hereunder.

THE EXPRESS UNDERTAKING AND REMEDY SET FORTH ABOVE ARE EXCLUSIVE AND NO WARRANTIES OR REMEDIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR USAGE SHALL APPLY.

C. Limitation of Liability

The liability of Company, its agents, employees, suppliers, and subcontractors of any tier, with respect to all claims arising out of performance or nonperformance under this Contract or in connection with the work, whether based on contract, warranty, tort (including negligence), or otherwise, shall not exceed in the aggregate the base contract price for such work performed or to be performed under this Contract and shall in no event include damages for loss of profits or revenue, or the loss of use of either; loss by reason of nonoperation or increased expense of operation of equipment; increased costs of purchasing or providing equipment, materials, supplies, or services outside of Company's scope of supply; costs of capital; inventory or use charges; or incidental, special or consequential damages of any nature.

This Limitation of Liability article shall apply notwithstanding any conflicting or inconsistent provision contained in any item or document comprising this Contract or any other contract and to the full extent permitted by law and regardless of fault.

D. Nuclear Indemnity (applicable only to nuclear related work)

When any services furnished hereunder are to be performed on or in connection with any nuclear installation or activity, Company and its suppliers and subcontractors shall have no liability for any nuclear damage, injury or contamination to any property located at the site and Purchaser indemnifies Company and its suppliers and subcontractors against any such liability, whether as a result of breach of contract, warranty, tort (including negligence), or otherwise. In addition, Purchaser warrants that it has entered into an agreement of indemnification as contemplated by Section 170 of the Atomic Energy Act of 1954, as amended, and has obtained nuclear liability insurance from American Nuclear Insurers of MAELU, or both, pursuant to Section 170 of said Act. Any of Company's material or equipment which becomes radioactive at the work site, shall, at Company's option, become the property of Purchaser. Any nuclear decontamination necessary for Company's performance (including warranty performance) shall be performed by Purchaser without cost to Company.

E. Purchaser's Actions

Company shall not be responsible for the acts or omissions of the employees, contractors, subcontractors, or agents of Purchaser, and shall not be liable for any property damage or personal injury caused by any act or failure to act by such employees, contractors, subcontractors, or agents.

F. Taxes

Company's prices do not include sales, use, excise or similar taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise, or other tax applicable to the work hereunder shall be for the account of Purchaser, or in lieu thereof, Purchaser shall provide Company with tax-exemption evidence acceptable to the appropriate taxing authorities.

G. Cancellation

In the event of bankruptcy or insolvency of Purchaser or in the event any proceeding is brought against Purchaser, voluntarily or involuntarily, under the bankruptcy or insolvency laws, or if the financial condition of Purchaser at any time does not, in the judgment of Company, justify continuance of the work, Company shall be entitled to cancel the contract and shall receive reimbursement for its reasonable and proper cancellation charges.

H. Assignment

The delegation or assignment by either party hereto of any or all of its duties or rights hereunder without the other party's prior written consent, which written consent shall not be unreasonably withheld, shall be void.

I. Applicable Law

The rights and obligations of the parties under this Contract shall be interpreted in accordance with and governed in all respects by the laws of the state of California.

J. Confidentiality

Any information, suggestions, or ideas transmitted by Purchaser to Company in connection with performance hereunder are not to be regarded as submitted in confidence except as may be otherwise provided in a writing signed by an authorized representative of Company.

K. Complete Agreement

This Contract contains the complete agreement between the parties, and no modification, amendment waiver, or other change will be binding upon Company unless assented to in writing by Company's authorized representative.