



## Purchase Order Canadian Terms and Conditions

### 1. Terms and Conditions

(a) This Purchase Order is an offer by the Buyer for the purchase of the goods specified on the face of this Purchase Order (the "Goods") from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the Purchase Order, the "Order"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.

(b) These Terms apply to any repaired or replacement Goods provided by Seller hereunder.

### 2. Assignment

Neither this Order nor any right or obligation hereunder shall be transferred or assigned by the Seller without the express written approval of the Buyer.

### 3. Change Orders

No change, modification or extension of this Order shall be effective against either Buyer or Seller unless it is made in writing in the form of a Purchase Order Change Order signed by the ARA Corporate Buyer and accepted by the seller.

### 4. Compliance with Applicable Canadian Law

Seller shall, at its own expense, comply with and assume all obligations imposed by any one or more of any Federal, Provincial or Local laws and regulations that may be applicable to this Order, including but not limited to all statutes, applicable standards, required permits, licenses, and taxes. In addition, Seller shall provide certifications of such compliance and sufficient data to support such certifications, either generally or specifically, upon request of the Buyer.

### 5. Confidentiality and Disclosure of Information

(a) All information disclosed orally or in writing by the Buyer to the Seller under this Order (subject to the exclusions below) shall be considered to be confidential and proprietary in nature ("Proprietary Information"). Seller shall: (i) use the Proprietary Information provided hereunder only for purposes directly related to this Order; (ii) restrict disclosure of Proprietary Information solely to those of its employees, subcontractors, or agents with a need to know and not disclose such Proprietary Information to any other parties, except with the Buyer's express written permission; and (iii) returned the Proprietary Information to Buyer upon request. To the extent that the Proprietary Information disclosed by Buyer: (a) is or becomes

part of the public domain, (b) is known to Seller prior to any disclosure to Seller by Buyer or Buyer's associates or customer ("Customer"); or (c) is subsequently rightfully received by Seller from a third party as non-proprietary information, the obligation(s) contained herein will not be operative.

- (b) No news releases, public announcement, denial or confirmation of any part of the subject matter of this Order or any phase of any program hereunder shall be made without prior written consent of Buyer. The restrictions of this paragraph shall continue in effect upon completion or termination of this Order for such period of time as may be mutually agreed upon in writing by the parties. In the absence of such a time period, no disclosure is authorized. Failure to comply with the provisions of this Clause may be cause for termination under this Order.
- (c) The parties agree that any breach of the confidentiality provisions of this Article 4 would cause serious and irreparable harm to the Buyer and that the Buyer shall have the right to immediate injunctive relief in the form of a court order enjoining the Seller from any action or threatened action that constitutes or would constitute a breach of such confidentiality provisions, without the necessity for posting bond, in addition to other rights or remedies to which the Buyer is or may be entitled at law or in equity or under this Order.
- (d) The terms of this Article 4 will not preclude the disclosure of information concerning work under this Order by either Party if such disclosure is: (1) in response to a valid order of a court or other governmental body of Canada or any administrative subdivision thereof; or (2) otherwise required by law; provided, however, that the Buyer shall provide the Seller reasonable notice of any such request or requirement so that Seller may challenge the disclosure, and that the Buyer will limit any disclosure to the extent required for such purposes.

## **6. Controlling Law and Disputes**

Any disputes arising hereunder shall be governed and construed in accordance with the laws of the Province of Ontario, including the federal laws of Canada applicable therein. In the case of any dispute arising hereunder which cannot be resolved by amicable resolution and good faith negotiations between the Parties, the Parties shall refer the matter to an ad hoc conciliation committee made up of one senior management person from each party. If the ad hoc committee fails to resolve the matter amicably within a period of seven (7) business days of the dispute having been referred to the ad hoc conciliation committee, then such dispute shall be referred to mediation pursuant to the National Mediation Rules of the ADR Institute of Canada. The place of mediation shall be Toronto. If such dispute is unable to be resolved by mediation, the Parties shall refer the dispute to arbitration by a single arbitrator pursuant to the Arbitration Act, 1991, S.O. 1991, c. C17, as amended. The place of arbitration shall be Toronto. Any decision of the arbitrator shall be final and binding upon the Parties. Pending the resolution of any dispute under this Contract, the Seller shall proceed as directed by the Buyer..

## **7. Correction of Defects**

If Seller's original deliverable under this Order does not meet Buyer's specification(s), by mutual agreement between Buyer and Seller, Seller shall provide Buyer with revised deliverable(s) which corrects the defect(s) at no additional cost to Buyer.

## **8. Counterfeit Goods**

- (a) For purposes of this clause, Work consists of those goods delivered under this Order that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
- (b) SELLER shall not deliver Counterfeit Work to ARA under this Order.
- (c) SELLER shall only purchase products to be delivered or incorporated as Work to ARA directly from the Original Manufacture or through an authorized distributor chain.

## **9. Excusable Failure or Delay**

Neither Buyer nor Seller shall be held responsible for the failure or delay in delivery or acceptance of services and/or goods sold hereunder where such failure or delays are due to earthquake, hurricane, flood, fire, or other unusually severe acts of God or nature, war, rebellion, civil disorder, acts of terrorism, and any other unforeseeable causes beyond the reasonable control of the Party whose performance is affected (except for financial inability), but the party seeking to avail itself of any foregoing excuses shall promptly notify the other party of the reasons for any failure or delay in delivery or acceptance and shall exert its best efforts in avoiding further delay.

## **10. Export Control**

- (a) Seller agrees to notify ARA if any deliverable under this Purchase Order is restricted by the export control laws or regulations of the United States or Canada.
- (b) Seller shall immediately notify ARA Procurement if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any United States or Canadian Government entity or agency.
- (c) Seller's failure to comply with the terms of this clause may be deemed a material failure to perform under this Purchase Order and shall subject Seller to termination.
- (d) Seller shall indemnify and hold ARA harmless from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any Seller's noncompliance with the export control laws or regulations of the United States or Canada.

## **11. Fair Wages and Hours of Labour**

Seller certifies that in the production of the goods and/or performance of the services covered by this Order that the Seller has complied with all applicable requirements of the Fair Wages and Hours of Labour Act, as amended and regulations and orders issued thereunder.

## **12. Indemnification**

- (a) To the fullest extent permitted by law, each Party shall defend, indemnify and hold harmless the Customer, the other Party, and the other Party's consultants, agents and employees (collectively, the "Indemnitees") from and against the aggregate of any and all Damages incurred or suffered by any of the Indemnitees arising out of, relating to, or

resulting from a third party claim alleging: (i) negligence or fraud in the performance of this contract; (ii) infringement of third party intellectual property rights; or (iii) Indemnitor's breach of its obligations under this Order. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist under this Order or by operation of law. No defense, indemnification or hold harmless obligation to Seller in this Article 13 shall be limited by any worker's compensation acts, disability benefit acts or other employee benefits acts.

- (b) In lieu of any warranty by Buyer or Seller against infringement, statutory or otherwise, it is agreed that each Party shall defend at its expense any third party claim that any item it furnishes under this Order or the normal use or sale thereof infringes any U.S. or Canadian patent or copyright, and shall pay its own costs and damages finally awarded in any such suit.
- (c) Each Party shall promptly notify the other Party of any third party claim for Damages that require indemnification pursuant to Clause 13.a.
- (d) For purposes of this Article 13, "Damages" means the aggregate of any and all actions, suits, claims, losses, costs, judgments, deficiencies, penalties, obligations, liabilities, damages, fines and expenses (including, without limitation, reasonable attorneys' fees and disbursements) of any kind (including any special, consequential, incidental, punitive and any other indirect damages to the extent suffered directly or indirectly by any Party or any non-Party and claimed against a Party, but excluding any special, consequential, incidental, punitive and any other indirect damages as to any claim brought by one Party or its indemnitees under this Article 13 against the other Party).

### **13. Gratuities/Kickbacks**

Seller shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as an ARA supplier.

### **14. Inspection and Acceptance**

All goods sold under this Order shall be subject to inspection and acceptance by Buyer after delivery and before final payment.

### **15. Insurance Requirements**

The following provision shall apply only if and to the extent that Seller's personnel enter or perform work at premises owned or controlled by the Buyer or Buyer's customer.

Unless otherwise agreed by the Parties in writing, throughout the period of performance of this Order, the Seller shall maintain the following types and amounts of insurance coverage: Workmen's Compensation and Employer's Liability Insurance with a minimum amount of \$100,000; Comprehensive General Liability Insurance with a comprehensive form of coverage for at least \$1,000,000 per occurrence; Comprehensive Automobile Liability Insurance with a minimum amount of \$500,000/person, \$1,000,000/accident for bodily injury, and \$50,000/accident for property damage. Seller shall provide certificates of insurance attesting to the existence of such coverages to Buyer prior to the start of the Period of Performance and annually thereafter during the Period of Performance of this Subcontract and for one (1) year thereafter. The insurance certificate(s) shall include endorsement adding Buyer as additional insured party, stating coverage is primary and not contributory with any other insurance or self-insurance available to additional insures, and a waiver of subrogation in favor of Buyer. Seller

shall notify Buyer no less than 30 days prior to cancellation of this policy. This language shall be included on the certificate that is provided to the Buyer.

Failure of Seller to procure or maintain required insurance shall constitute a material breach of this Order upon which Buyer may immediately stop all progress payments, terminate, or suspend this Order. Failure of Buyer to demand such Certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Seller's obligations to maintain the above stated insurance coverages with Buyer as an additional insured party, for the full term of this Order. This identification of failure to procure or maintain required insurance as a material breach does not express the intent of the parties that such failure is the only possible material breach of this Order.

#### **16. Invoice and Payment**

Seller will invoice in accordance with the requirements of the Order. Payments terms are net 30 days after receipt of an acceptable invoice. Invoices will reference:

- Seller's unique invoice number
- Date of invoice
- ARA's Purchase Order Number
- Period of Performance for which the invoice is submitted (as applicable)
- Invoices will be submitted to:

**Applied Research Associates, Inc.**

In care of the Billing Address specified in this Order

#### **17. Limitation of Liability**

Notwithstanding anything to the contrary herein, Buyer's total liability for any claim under this Order shall not exceed the value of the Order and Buyer shall not be liable to the Seller for special, indirect, incidental, nor consequential damages arising from the use of the products delivered under this Order.

#### **18. Employment Equity Act**

This contractor and subcontractor shall abide by the applicable requirements of the Employment Equity Act, the purpose of which is to "achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences." S.C. 1995, c. 44, 3.

#### **19. Occupational Health and Safety**

This contractor and subcontractor shall abide by the applicable requirements of the Ontario Occupational Health and Safety Act or analogous law and any standards and regulations issued thereunder. Seller accepts any responsibility arising from the failure to comply with such laws, standards and regulations.

## **20. Packing and Shipping**

Unless otherwise specified, all work is to be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer's Order Number, item number (if any), dates of shipment, and, if applicable, the names and addresses of consignor and consignee. Bills of lading shall include Buyer's Order Number. Unless otherwise specified, delivery shall be FOB Destination.

## **21. Patents and Data**

The Seller shall notify the Buyer immediately upon becoming aware of any invention or technical data conceived or first actually reduced to practice during the performance of this Order subject to or that may become subject to the provisions of Canadian or U.S. Patents or Copyright laws. Such notification shall include sufficient information for the Buyer to determine whether or not the general provisions of this Order are sufficient to protect the Customer's interest in such invention or technical data as it relates to the performance of the work hereunder.

## **22. Precedence**

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order and /or Task Order, release document or schedule, (including any continuation sheets), as applicable, including any special terms and conditions, (2) ARA PO General Terms and Conditions, (3) Specification/Statement of Work document, (4) Vendors Quote or Terms and Conditions.

## **23. Price**

The price for the goods or services sold hereby, including cost for labor, materials, equipment, licenses, taxes, and any other related costs, shall not be higher than that appearing on the face of this Order.

## **24. Records Retention**

Documents received/generated shall remain on file at Seller's facility for at least three (3) years from the conclusion of the contract to aid in answering any future questions that might develop.

## **25. Termination**

Buyer may terminate this Order at any time and for any reason by written notice to Seller. Any termination by Buyer shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records and documents relating thereto.

- **Termination for Buyer's Convenience:** In the event termination is not for cause, then Seller shall be entitled to receive only reasonable costs and expense incurred in performance of this Order to the date of termination, provided Seller submits notice of the costs and expense incurred to Buyer within 60 days after the date of termination. The reimbursement to Seller will be costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of this Order which are not recoverable by Seller, provided that no allowance shall be made to Seller for any anticipated effort or fee not

already expended or earned. Any unused deposits or advanced payments will be refunded immediately, or, if applicable, will be deducted from the final payment to the Seller.

- **Termination for Cause:** In the event of termination for cause, Buyer shall have no liability whatsoever to Seller. The Buyer may, by written notice of default to the Seller, terminate the whole or any then remaining part of this effort if Seller fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if Seller fails to perform any of the other provisions of this Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure; or Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due. Any unused deposits or advanced payments will be refunded immediately, or, if applicable, will be deducted from the final payment to the Seller.

## **26. Time and Delivery**

Time shall be of the essence. Unless otherwise agreed in writing Seller shall deliver pursuant to the delivery schedule. If a mutually agreed extension is arrived at for the final delivery date, the Buyer will document any such changes to the original Order.

## **27. Waiver**

The failure of the Buyer to insist in any one or more instances upon the full performance of any of the terms, covenants of this Order or to exercise and rights hereunder shall not be construed as a waiver of any legal rights the Buyer has with respect to such nonperformance or be construed as Buyer's condoning further nonperformance of such terms, covenants or conditions.

## **28. Warranty**

All goods sold and delivered by Seller to Buyer shall be in full conformity with Buyer's specifications set forth or referred to on the face of this Order and will be fit and sufficient for the use intended by Buyer if known to Seller and will be of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the goods. If a non-conformity is presented to Seller by Buyer Seller will replace or correct the final deliverable at a mutually agreeable schedule.