



## Purchase Order General 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.

(c) Collectively Seller and Buyer may also be referred to as the ("Parties"), and individually as the ("Party").

(d) The information in the Purchase Order, that is not Seller's information, shall be deemed to be confidential and proprietary information of ARA ("ARA Proprietary Information"). Seller shall retain all such ARA Proprietary Information in confidence and will not disclose it without the prior written authorization from ARA, which writing is signed by a duly authorized representative of ARA.

### 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's duly authorized representative.

### 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 Buyer's authorized representative, which is identified on the cover page as the ARA Buyer and is accepted by the Seller.

### 4. Compliance with Applicable Federal, State and Local Laws

Seller shall, at its own expense, comply with and assume all obligations imposed by any other Federal, State, and 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, as required by said Federal, State, and local laws and regulations or specifically, upon request of the Buyer.

## **5. Confidentiality and Disclosure of Information**

Each Party will protect and safeguard the other Party's Proprietary Information. Except to the extent required by the Open Records Act, Seller shall not disclose information concerning work under this Order to any third party, unless such disclosure is necessary for the performance of work under this effort. Information disclosed by Buyer to Seller marked as "Proprietary" shall be treated as such by Seller for a period of five (5) years and returned to Buyer upon request. To the extent that information disclosed by Buyer: (a) is or becomes part of the public domain, (b) is known to Seller prior to any disclosure by Buyer, its associates, 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.

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 a written established period, no disclosure is authorized. Failure to comply with the provisions of this paragraph 5 may be cause for termination under this Agreement.

## **6. Controlling Law**

This Order is to be governed by the laws of the State of New Mexico.

## **7. Correction of Defects**

If Seller's original deliverable under this Order does not meet each of 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: provided such delay does not cause a delay in Buyer's deliverable to the customer. If the customer does not approve the delay, then Buyer may take whatever necessary actions are required up to and including termination of this PO and such termination will be considered a termination for cause.

## **8. Counterfeit**

- (a) For purposes of this clause, Work consists of those parts 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.
- (d) All Goods and Services provided under this PO will comply with all applicable US laws and regulations, and if applicable, to the laws and regulations of the applicable states.

## **9. Disputes**

Any controversy, claim or litigation under this Order, if commenced by Seller, shall be brought in a court of competent jurisdiction and will be interpreted and governed by the laws of the State of New Mexico. Pending the resolution of any dispute under this Contract, the Seller shall proceed as directed by the Buyer.

## **10. 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 any act of God, or the public enemy, war, compliance with laws, governmental acts or regulations, fire, flood, quarantine, embargo, epidemic or pandemic, strikes and labor interruption, accident, unusually severe weather or other causes similar to the foregoing beyond a Party's reasonable control (collectively "Force Majeure"), but the Party impacted by any of the foregoing shall promptly notify the other Party of the reasons for any failure or delay in delivery or acceptance and shall exert its best efforts to minimize the impact of the foregoing.

## **11. Export Control**

- (a) The Seller hereby acknowledges that some or all of the articles, services, components, information (including Proprietary Information), data, or other material provided or exchanged pursuant to this Purchase Order may be controlled for export under U.S. export laws and regulations. Seller shall comply with (as applicable) the U.S. Department of State International Traffic In Arms Regulations (Title 22, CFR Parts 120-130), the U.S. Department of Commerce Export Administration Regulations (Title 15, CFR 730-774), and any other U.S. Government trade regulation, including not providing access to any technical information provided by Buyer to any person or entity on any Denied Persons or Entities lists.
- (b) Seller shall notify Buyer if any deliverable under this Purchase Order is restricted by export control laws or regulations.
- (c) Seller shall immediately notify Buyer 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 U.S. Government entity or agency.
- (d) Seller's failure to comply with the terms of this paragraph 11 may be deemed a material failure to perform under this Purchase Order and shall subject Seller to termination for cause.
- (e) Seller shall indemnify and hold Buyer, its officers, directors, employees and agents harmless from and against any claim, proceeding, action, fine, loss, cost and/or damages arising out of or relating to any Seller's noncompliance with export control law and regulations, and any other US trade laws and regulations.

## **12. Fair Labor Standards**

Seller certifies that in the production of the goods and/or performance of the services covered by this Purchase Order that the Seller has complied with all applicable requirements of all paragraphs hereunder including Sections 6, 7, and 12 of the U.S. Fair Labor Standards Act, as

amended and regulations and orders of the United States Department of Labor issued under paragraph 14 thereof.

### **13. Federal Contract Acquisition Requirements**

The following Federal Acquisition Regulations are applicable for all Federal Contract procurements and are hereby incorporated by reference, in addition to any attached prime contract flowdown clauses as applicable:

**52.212-4** - Contract Terms and Conditions—Commercial Items

**52.212-5** - Contract Terms and Conditions Required To Implement Statutes or Executive Orders - Commercial Items

**52.213.4** - Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items)

**DFAR 252.244-7000** – Subcontracts for Commercial Items

The full text of a clause may be accessed electronically at <http://acquisition.gov/far/index.html>.

**Seller shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR, DFARS, or any other applicable agency-specific flow down requirement.**

### **14. 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 a supplier to Buyer.

### **15. Indemnification / Infringement**

A. To the fullest extent permitted by law Buyer and Seller shall each indemnify and hold harmless Buyer's customer, the other Party, and the other Party's officers, directors, employees, contractors, consultants and agents from and against any and all claims, damages, losses, expense, including but not limited to costs of arbitration or litigation and reasonable attorney's fees arising out of or resulting from negligent or willful misconduct in performance under this Order or breach or default under the Order or by acts or omissions of the defending Party, including the defending Party's officers, directors, employees, contractors, consultants, and anyone directly or indirectly employed by the defending Party, its agents or anyone for whose acts they may be liable. 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 of Seller 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, each Party shall defend at its expense any claim that any item it furnishes under this Order or through the normal use or sale of said item(s) infringes any U.S. patent copyright and/or trade secret, and such defending party shall pay its own costs and all damages finally awarded in any such suit.

Notwithstanding the foregoing paragraph, when this Order is performed under the Authorization and Consent of the U.S. Government to infringe U.S. Patents, liability for infringement of such Patents in such performance shall be limited to the extent of the obligation of that Party to indemnify the U.S. Government. If Seller has reason to believe that

the required design, process or product is an infringement of a copyright patent, or other intellectual property such information shall be promptly furnished to Buyer.

C. Each Party shall promptly notify the other Party of any such claim against the other Party.

#### **16. Inspection and Acceptance**

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

#### **17. Insurance Requirements - Onsite Services**

If required, the Seller shall submit to the Buyer certificates of insurance attesting to Seller's Workmen's Compensation and Employer's Liability Insurance with a minimum coverage amount per occurrence 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 further certifies annual submission thereafter for the life of this Order. Seller shall notify Buyer no less than 30 days prior to cancellation of any of these policies. This language shall be included on the certificate that is provided to the Buyer.

#### **18. 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 and acceptance of the deliverables. Invoices will reference:

- Seller's unique invoice number
- Date of invoice
- Buyer'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

#### **19. Limitation of Liability**

In no event shall Buyer be liable for any incidental, indirect, special, and consequential or punitive damages, even if Buyer knew or should have known of the possibility of such damages.

#### **20. Non-Discrimination Compliance**

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, sexual orientation, national origin, protected veteran status or disability. The ARA Officer of Affirmative Action Implementation is Dominique Atencio, HR Director.**

ARA takes affirmative action in affording equal employment opportunities to all qualified persons without regard to race, color, religion, sex, sexual orientation, national origin, age, marital status,

genetic information, disability or protected veteran status. This includes, but is not limited to, the following: Hiring, placement, upgrading, transfer, demotion or promotion; Recruitment, advertising or solicitation for employment; Treatment during employment; Rates of pay or other forms of compensation; Selection for training, including apprenticeship; Layoff or termination. ARA cooperates to the fullest extent with the applicable regulations of the Civil Rights Act and any legislation on Equal Employment Opportunity. We request the cooperation of our subcontractors, vendors and suppliers in our equal opportunity and affirmative action efforts and expect them to put in place equal opportunity and affirmative action policies as required.

ARA complies with Federal affirmative action regulations of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act, and the Jobs for Veterans.

ARA complies with the regulations of Title VI of the Civil Rights Act of 1964, as amended, and other nondiscrimination laws and authorities that include regulations relative to the nondiscrimination laws and authorities, that include regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations (CFR) and the Federal Highway Administration's Title 23 Code of Federal Regulation 200. ARA does not discriminate on the grounds of race, religion, color, sex, national origin, age or disability in the selection and retention of subconsultants, including procurements of materials and leases of equipment.

## **21. Occupational Safety and Health Act**

Incorporated in this Order by reference thereto are all laws, interim and permanent standards, rules and regulations of the U.S. Occupational Safety and Health Act and all state and federal laws and regulations relating to safety and health standards and regulations. Seller accepts any responsibility arising from the failure of such purchased supplies, articles or services to comply with such laws, standards and regulations.

## **22. 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.

## **23. Patents and Data**

The Seller shall notify the Buyer immediately upon becoming aware of any; (i) invention conceived or first actually reduced to practice provided there is some conception as well; (ii) copyrighted work created; (iii) technical information created; or (iv) technical data created during the performance of this Order subject to or that may become subject to the provisions of U.S. Patents laws, U.S. Copyright laws, or Trade Secrets laws or subject to a confidentiality agreement between the Parties. 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, copyright, technical information, or technical data as it relates to the performance of the work hereunder.

#### **24. Precedence**

Any inconsistencies in this Order 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) Vendor's Quote.

#### **25. 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, and the Seller's proposal which is incorporated into this Order.

#### **26. Records Retention**

Documents received/generated hereunder shall remain on file at Seller's facility for at least four (4) years from the conclusion of the contract to aid in answering any future questions that might develop.

#### **27. 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 purchase 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 Agreement 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.

**28. Time and Delivery**

Time shall be of the essence. Unless otherwise agreed in writing Seller shall deliver on the proposed 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 in a written modification signed by duly authorized representatives of each Seller and Buyer, and such writing shall be in conformance with this Purchase Order.

**29. Waiver**

No delay, failure or refusal on the part of a Party to exercise or enforce any right under this Agreement shall impair such right or be construed as a waiver of such right or any obligation of the other Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give notice to the other Party of a breach of this Agreement shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

**30. Warranty**

All services and/or 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 hereof or if none are set forth or referred to, shall be in conformity with Seller's published specifications or proposal provided to the Buyer and will be fit and sufficient for the use intended by Buyer and will be of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the services and/or goods. If a non-conformity is presented to Seller by Buyer and Buyer's position is reasonable, Seller will replace or correct the final deliverable at a mutually agreeable schedule.