



## 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.

### 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 Federal, State and Local Laws

Seller shall, at its own expense, comply with and assume all obligations imposed by any one or more of any 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, either generally or specifically, upon request of the Buyer.

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

- (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.

## **9. Disputes**

Any controversy, claim or litigation under this Order, if commenced by Seller, shall be brought in a court of competent jurisdiction 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, strikes and labor interruption, accident, unusually severe weather or other causes similar to the foregoing (collectively, "Force Majeure") beyond their reasonable control, 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.

## **11. Export Control**

- (a) The Seller hereby acknowledges that some or all of the articles, services, components, 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 agrees to 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.

- (b) Seller agrees to notify ARA if any deliverable under this Purchase Order is restricted by export control laws or regulations.
- (c) 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 U.S. Government entity or agency.
- (d) 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.
- (e) 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 export control regulations.

## **12. Fair Labor Standards**

Seller certifies that in the production of the goods and/or performance of the services covered by this invoice that the Seller has complied with all applicable requirements of 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 Sections 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:

**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)

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 an ARA supplier.

## **15. Indemnification / Infringement**

- A. To the fullest extent permitted by law Buyer and Seller shall indemnify and hold harmless Buyer's customer, the Other Party, and the Other Party's consultants, agents and employees

from and against any and all claims, damages, losses, expense, including but not limited to costs of arbitration or litigation and attorney's fees arising out of or resulting from performance under this Order or breach or default under the Order or by acts or omissions of the Other Party, including the Other Party's contractors, consultants, anyone directly or indirectly employed by said 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 to 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, it is agreed that each Party shall defend at its expense any claim that any item furnished under this Order or the normal use or sale thereof infringes any U.S. patent or copyright, and shall pay its own costs and 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 or a patent, such information shall be promptly furnished to Buyer.

- C. Each party shall promptly notify the other party of any claim against the other.

## **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 certifies submission to the Buyer of a certificate of insurance attesting to the existence of 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 further certifies annual submission thereafter for the life of this Order. 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.

## **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. 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

## **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 Beth Fisk, 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 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 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.

### **24. Precedence**

Any inconsistencies in this Contract 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 or Terms and Conditions.

### **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.

### **26. 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.

### **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.

## **29. 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.

## **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 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 services and/or goods. If a non-conformity is presented to Seller by Buyer and Seller concurs, Seller will replace or correct the final deliverable at a mutually agreeable schedule.