



## **PURCHASE ORDER TERMS AND CONDITIONS**

### **ARTICLE 1: ACCEPTANCE AND MODIFICATION OF TERMS**

Acceptance of this Order by Seller may be made by signing the acknowledgment copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.

### **ARTICLE 2: GENERAL RELATIONSHIP**

Seller agrees that in all matters relating to this Order it shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

### **ARTICLE 3: SUBCONTRACTS AND ASSIGNMENTS**

Seller agrees to obtain Buyer's approval before subcontracting this Order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Further, this Order shall not be assigned or delegated by Seller without the prior written consent of Buyer.

### **ARTICLE 4: RESPONSIBILITY FOR PROPERTY**

In the case of any tools, dies, jigs, fixtures, patterns, equipment, facilities or other property (hereafter "property") of Buyer and/or Buyer's customer, which may be in the possession, or control of Seller in connection with this Order, Seller shall use such property only in performance of and as specifically authorized by this Order. Seller should take appropriate measures including clearly marking, maintaining an inventory and segregating Buyer's property to protect Buyer's rights and interests in any property provided by Buyer to Seller. Such property shall be returned to Buyer in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of such goods. Risk of loss with respect to all such property shall be the responsibility of Seller. Seller shall indemnify, defend and hold harmless Buyer from any loss or damage to such property, which is caused by, or results from any act or omission on the part of Seller or its agents, employees or subcontractors. If Seller acquires or manufactures any property in connection with this Order and charges Buyer therefore, Buyer may, at its option upon completion or termination of this Order, elect to take title to such property and, upon receiving notice of such election; Seller shall deliver such property to Buyer.

### **ARTICLE 5: RESPONSIBILITY FOR SUPPLIES**

Seller shall bear the risk of loss of, or damage to, the supplies covered by this Order, until delivered to Buyer's Plant (or to such other place as may be designated on the face of this Order) and accepted by Buyer, including any defective, nonconforming or rejected supplies.

### **ARTICLE 6: INTERCHANGEABILITY**

All items furnished pursuant to this Order under the part number specified shall be fully interchangeable with and equal in function and quality to items heretofore furnished under the same part number. All interchangeable items must be approved by APSE, in writing, prior to shipment.

### **ARTICLE 7: PACKAGING AND SHIPPING**

Any goods purchased hereunder must be suitably packed and prepared for shipment to secure the lowest transportation rates or appropriately packed to comply with any specific transportation specifications of



Buyer, and in all cases, to comply with carrier's regulations. All charges for packing and crating are included in the price for the goods set forth herein and will be paid by Seller. Transportation will be in accordance with Article 8. A Packing List shall accompany each box or package shipment showing the order number specified hereon as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count, weight or other measure of Buyer shall be final and conclusive. Buyer shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.

#### **ARTICLE 8: TRANSPORTATION**

- FOB: Unless otherwise specified, ship F.O.B. Destination. If shipment is other than F.O.B. Destination, the seller must provide estimated shipping costs.
- Prepaid Transportation: (when specified) Charges must be supported by a paid freight bill or equivalent,
- Cartage: No charge allow unless authorized by APSE,
- Premium Transportation: No charge allowed unless authorized by APSE
- Insurance: No charge allowed unless authorized by APSE.

#### **ARTICLE 9: CHANGES AND SUSPENSION**

Buyer may, by written notice to Seller at any time, make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) time or place of delivery; (d) method of shipment or packing; and (e) the quantity of Buyer furnished property. Buyer may, for any reason, direct Seller to suspend, in whole or in part, delivery of goods or performance of services hereunder for such period of time as may be determined by Buyer in its sole discretion. If any such change or suspension causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, provided Seller shall have notified Buyer in writing of any claim for such adjustment within twenty (20) days from the date of notification of the change or suspension from Buyer. No such adjustment or any other modification of the terms of this Order will be allowed unless authorized by Buyer by means of a written modification to this Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

#### **ARTICLE 10: NOTICE OF DELAYS**

Whenever the Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer.

#### **ARTICLE 11: COMPLIANCE WITH LAWS**

Seller shall comply with the applicable provisions of any federal, state or local law or ordinance and all orders, rules and regulations issued there under.

#### **ARTICLE 12: DELIVERY**

Time is of the essence in this Order. The date specified in the order is the latest date shipment must be made from Seller in order for Buyer to meet Customer required delivery date. Buyer reserves the right to refuse any goods or services and to cancel all or any part hereof if Seller fails to ship all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's shipment will not meet agreed schedules, Buyer may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier, or until orders for services have been performed, received and accepted.

#### **ARTICLE 13: INSPECTION**

All goods supplied and services performed shall be subject to inspection and test by Buyer, its agents and its customers at all reasonable times and places, whether during or after manufacture as to goods, or performance as to services, and notwithstanding the terms of delivery or payment or, as to goods, that title has not yet passed to Buyer or its customers. In the event goods or services are not in accordance with the specifications and instructions of Buyer, Buyer may require prompt correction, repair, replacement or re-



performance thereof at Buyer's option and Seller's sole expense. If Seller is unable to accomplish the foregoing, then Buyer may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith. After Seller is notified of the foregoing defects or non-conformances, all risk of loss with respect to such goods shall be the responsibility of Seller and Seller shall pay all packing and shipping charges in connection with such defective or non-conforming goods. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations hereunder.

#### **ARTICLE 14: ACCEPTANCE**

Acceptance of any part of the Order shall not bind Buyer to accept future shipments or performance of services nor deprive it of the right to return goods already accepted and shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods because of failure to conform to the Order or by reason of defects, whether latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages.

#### **ARTICLE 15: PAYMENT**

Invoices shall be submitted in duplicate and shall contain the following information: order number, item number, description of articles, sizes, quantities, unit prices and extended totals. Invoices submitted hereunder will be paid in accordance with the terms as stated on the purchase order and upon receipt of proper invoice or acceptance of delivered items by the Buyer, whichever occurs later. Before payment, Buyer may make any adjustments to Seller's invoices to accommodate shortages, late delivery, rejections, or other failure to comply with the requirements of this Order. Cash discounts will be taken from the date of final acceptance of delivered items, or the date of acceptable invoice, whichever is later. Payment shall not constitute final acceptance. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller.

#### **ARTICLE 16: WARRANTY**

Seller warrants that items provided under this Order are merchantable and fit for use for the particular purpose for which they are intended. All warranties of Seller shall run to Buyer and Buyer's customers.

(a) Seller expressly warrants to Buyer that, at the time of delivery of any article delivered under this Order, such article will be free from defects in material and workmanship, and will otherwise conform to all requirements of the contract, including the following:

(i) Applicable specifications, drawings and standards listed in the DoD Index of Specifications and Standards (DODISS);

(ii) Applicable Government drawings, unlimited rights to company drawings, and specifications and standards other than Federal or Military specifications and standards;

(iii) Applicable manufacturers' (OEMs') drawings, specifications, and standards;

(iv) Applicable industry specifications and standards; and,

(v) All goods delivered pursuant hereto will be new, unless otherwise specified.

(b) Except as provided in Paragraph (c) below, this warranty shall be effective for a period of one year from the date on which the article is delivered to a point of use (POU) bin, or for the period accorded by the Seller, whichever is later. Any part, which is warranted for the identical period, commencing from the date the part is placed in the POU bin.

(c) In the event of a latent defect, fraud, or gross mistake as amounts to fraud, there shall be no time limited upon which APSE must exercise a remedy relating to the delivery of a nonconforming article to a POU bin.

#### **ARTICLE 17: TERMINATION FOR CONVENIENCE**

Buyer may terminate this Order, in whole or in part, at any time for any reason whatsoever by giving not less than seven (7) days written notice to the Seller. If this Order is so terminated, Buyer shall pay Seller only for that portion of the services actually performed and for documented expenses incurred by Seller and authorized by Buyer prior to the date of termination. Under no circumstance shall Buyer be liable for any other damages whatsoever, including loss of anticipated profit on account of such termination. Notwithstanding any partial termination of services, Seller shall continue to perform and complete any remaining services required. In the event of strike, slow down, "sick-out", or work stoppage for any reason Buyer shall have the right to immediately terminate this Subcontract by written notice to Seller. No further action is required of Buyer.



**ARTICLE 18: DEFAULT**

(a) Buyer may, without liability terminate this Purchase Order, in whole or in part, by written notice of default to Seller, if Seller,

(1) fails to comply with the Terms and Conditions of this Purchase Order; (2) fails to deliver Supplies or Services in accordance with the delivery schedules provided for in this Purchase Order; or (3) becomes subject to any proceeding under bankruptcy or insolvency laws or a receiver is appointed or makes an assignment for the benefit of creditors.

(b) If Buyer terminates this Purchase Order, in whole or in part, Buyer may procure similar Services or Supplies from a third party and Seller shall be liable for any additional costs beyond the Purchase Order price for the remaining Services or Supplies. In the event of a partial termination, Seller shall be compensated only for the Services actually performed or Supplies actually delivered and accepted.

**(c) ARTICLE 19: TAXES**

The price(s) set forth herein shall include all applicable Federal, State and local taxes and duties.

**ARTICLE 20: ADVERTISING**

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the supplies or services hereunder, or disclose any of the details connected with this Order to any third party, except as may be required to perform this Order.

**ARTICLE 21: INSURANCE**

In accordance with subparts (a) and/or (b) below, upon Buyer's request Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverage's are in force and providing not less than thirty days notice prior to any cancellation or restrictive modification of the policies. Further, the required insurance coverage below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverage and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

(a) To the extent that Seller is performing services under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:

(i) Statutory Workers' Compensation and Employers' Liability in an amount no less than \$1 Million per occurrence covering its employees, including a waiver of subrogation obtained from the carrier in favor of Buyer;

(ii) Commercial General Liability in an amount no less than \$1 Million per each occurrence and \$2 Million in the aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability, and independent contractors' liability. Buyer, its officers and employees shall be included as Additional Insured's and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;

(iii) Automobile Liability in an amount no less than \$1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles. Buyer, its officers and employees shall be included as Additional Insured's on the policy;

(iv) Professional Liability in an amount no less than \$1 Million per occurrence covering damages caused by any acts, errors, and omissions arising out of the professional services performed by Seller, or any person for whom the Seller is legally liable. To the extent that coverage for Seller's services are not excluded in (ii) above by virtue of being deemed not of a professional nature, this requirement does not apply.

(v) All-Risk Property Insurance in an amount adequate to replace property, including supplies covered by this Order, of Buyer and/or Buyer's customer which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.

(b) To the extent that Seller is providing products under this Order, Seller agrees to purchase and maintain at its own expense the following insurance coverage's with minimum limits as stated:



- (i) Commercial General Liability as described above in ARTICLE 21 (a) (ii);
- (ii) Products Liability in an amount no less than \$1 Million per occurrence covering bodily injuries or property damage arising out of defective products or work completed. To the extent that coverage for Seller's products are not excluded in (i), this requirement does not apply;
- (iii) All-Risk Property Insurance (as described above in ARTICLE 21 (a) (v) ) in an amount adequate to replace property of Buyer and/or Buyer's customer, including supplies covered by this Order, which may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.

**ARTICLE 22: CONFIDENTIALITY OF EQUIPMENT AND DATA**

Seller agrees that it will keep confidential the features of any equipment, tools gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by Buyer and use such items only in the performance of this Order or other orders from Buyer and not otherwise, unless Buyer's written consent to first obtained. Seller also agrees to use any designs or data in accordance with any restrictive legends placed on such items by the Buyer or any third party. Upon completion or termination of this Order, Seller shall return all such items to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

**ARTICLE 23: PATENTS AND DATA**

- (a) If any experimental, developmental or research work is performed hereunder, Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to make, have made, use and sell any invention, improvement or discovery (whether or not patent-able) that Seller conceives or first actually reduces to practice in the performance of this Order.
- (b) Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable, royalty-free license to reproduce, translate, publish, use and disclose, and to authorize others to do so, for any purpose, (i) any copyrighted or copyrightable material delivered or incorporated into any deliverable hereunder; and (ii) all or any part of any deliverable hereunder, including without limitation, any reports, drawings, blueprints, data, software and technical information.

**ARTICLE 24: INDEMNIFICATION**

- (a) Seller shall indemnify, defend and hold APSE and APSE's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) intentional misconduct, negligence, or fraud,
- (ii) breach of any representation, warranty or covenant made herein, or (iii) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party.
- (b) Buyer shall promptly notify Seller of any claim against Buyer that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.

**ARTICLE 25: LIMITATION OF LIABILITY**

Buyer's liability to Seller hereunder shall not, under any circumstances, be greater than the total dollar amount of the Purchase Order for which such liability relates to or arises out of. Under no circumstances shall Buyer be liable to Seller for any consequential, indirect, special, punitive or exemplary damages, regardless of whether such damages are based on tort, a breach of contract, breach of warranty, strict liability or any other theory of recovery and regardless of whether Buyer has been advised of the possibility of the same.

**ARTICLE 26: INFRINGEMENT INDEMNITIES**

Seller shall indemnify, defend and hold Buyer and Buyer's customers (hereinafter collectively referred to as "Buyer") harmless from and against any claim, suit or proceeding ("claim") brought against Buyer asserting that the goods or services, or any part thereof, furnished under this Order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such claim including reasonable attorneys' fees. In the event such goods or



services or use thereof are enjoined in whole or in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such goods or services; (ii) in a manner acceptable to Buyer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

**ARTICLE 27: NON-WAIVER OF RIGHTS**

The failure of Buyer to insist upon strict performance of any of the terms and conditions in this Order or to exercise any rights or remedies shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at

any time thereafter. Any rights and remedies specified under this Order shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or equity. The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of other parts thereof.

**ARTICLE 28: EXPORT CONTROL COMPLIANCE FOR FOREIGN PERSONS**

The subject technology of this Order (together including data, services, and hardware provided hereunder) may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. Exports or re-exports of any U.S. technology to [any destination under U.S. sanction or embargo are forbidden. Access to certain technology ("Controlled Technology") by Foreign Persons (working legally in the U.S.), as defined below, may require an export license if the Controlled Technology would require a license prior to delivery to the Foreign Person's country of origin.

SELLER is bound by U.S. export statutes and regulations and shall comply with all U.S. export laws. SELLER shall have full responsibility for obtaining any export licenses or authorization required to fulfill its obligations under this Subcontract. SELLER hereby certifies that all SELLER employees who have access to the Controlled Technology are U.S. citizens, have permanent U.S. residency or have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria are "Foreign Persons" within the meaning of this clause but have been authorized under export licenses to perform their work hereunder.

**ARTICLE 29: STANDARDS OF BUSINESS ETHICS & CONDUCT**

APSE believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. These characteristics make it imperative that APSE employees adhere to a particularly high ethical standard. Buyer's expectation is that Seller also will conduct its business fairly, impartially and in an ethical and proper manner. If Seller has cause to believe that Buyer or any employee or agent of Buyer has acted improperly or unethically under this agreement/order, Seller shall report such behavior to the APSE (Tracy Wimberly – 256/837-8040).

**ARTICLE 30: ORDER OF PRECEDENCE**

In the event of an inconsistency or conflict between provisions of this Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

1. Purchase Order and any purchase descriptions contained therein.
2. Purchase Order Terms and Conditions and Exhibits thereto.
3. Specifications and/or drawings.
4. Other provisions when attached.

**ARTICLE 31: GOVERNING LAW**

This Order shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict or choice of law provisions.



#### **ARTICLE 32: DISPUTES**

Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute (“dispute”) arising under or relating to this Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the County of Madison, State of Alabama. The arbitrator(s) shall be bound to follow the provisions of this Order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

#### **ARTICLE 33: ENTIRE AGREEMENT**

This Order, including all documents incorporated herein by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.

#### **ARTICLE 34: FAR and DFAR CLAUSES APPLICABLE TO ALL ORDERS IN SUPPORT OF A FEDERAL GOVERNMENT AGENCY**

The clauses in FAR Subpart 52.2 and DFAR Supplement 252.2 referenced below are applicable at the dollar thresholds as stated in the Federal Acquisition Regulation. These clauses are hereby incorporated and made a part of this Order, effective on the date of this Order (unless otherwise noted). To the extent that an earlier version of any such clause is included in the Prime Contract or Subcontract under which this Order is issued, the date of the clause as it appears in such Prime Contract or Subcontract shall be controlling and said version shall be incorporated herein.

**NOTE:** The full text of this clause may be found at <http://farsite.hill.af.mil>.

#### **Clause# & FAR Ref. Title of Clause**

**52.203-3 Gratuities (Applicable if PO exceeds \$100,000)**

**52.203-5 Covenant Against Contingent Fees (Applicable if PO exceeds \$100,000)**

**52.203-6 Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402) (Applicable if PO exceeds \$100,000)**

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions**

**52.21 9-8 Utilization of Small Business Concerns (Applicable if PO exceeds \$100,000)**

**52.222-26 Equal Opportunity (All solicitations & Contracts)**

**52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Applicable if PO exceeds \$25,000)**

**52.222-36 Affirmative Action for Workers with Disabilities (Applicable if PO exceeds \$10,000)**

**252.247-7023 Transportation of Supplies by Sea w/Alternate III**

**252.247-7024 Notification of Transportation of Supplies by Sea**

#### **ARTICLE 35: CLAUSES APPLICABLE WHEN SPECIFIED ON THE PURCHASE ORDER 1.**

**DFARS 252.225-7014 Preference for Domestic Specialty Metals (Alt I) NOTE:** The full text of this clause may be found at <http://farsite.hill.af.mil>.