

UNIVERSITIES SPACE RESEARCH ASSOCIATION

Purchase Order

Terms and Conditions - Commercial Items

1) *Acceptance*: This Order is Buyer's offer to Seller. Seller's acceptance is expressly limited to the written terms of this Order. Any additional or different terms proposed by Seller are objected to and are hereby rejected unless the same shall be accepted in writing by an authorized procurement representative of USRA. The Purchase Order, (which term shall be deemed to include plans, specifications regulation and any other documents or addenda to the extent that any of the same are referenced therein) become the exclusive agreement between the parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this purchase order and these terms and conditions: (a) acknowledgment of this purchase order; (b) furnishing of any part of the supplies/services required under this purchase order; (c) acceptance of any payment for the supplies/services; or (d) commencement of performance under this order.

2) *Assignment*. The Vendor/Supplier or its assignee's rights to be paid amounts due as a result of performance of this Purchase Order, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). All other assignments of Seller's rights and responsibilities under this Purchase Order may only be made with the prior written consent of USRA.

3) *Changes*. Changes in the terms and conditions of this Purchase Order may be made only by written agreement of the parties.

4) *Disputes*: Any dispute arising under this Purchase Order which is not settled by agreement of the parties shall be litigated in the state or federal courts of the state from which USRA's purchase order is issued. Seller agrees to the jurisdiction and venue of such courts. Seller shall proceed diligently with the work under this Purchase Order, pending final resolution of any dispute arising thereunder.

5) *Definitions*. "Commercial component" means any component that is a commercial item. "Commercial item" means - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that is further defined in FAR 52.202-1 Definitions. As used herein, a Purchase Order means either purchase of "supplies" (including goods, materials,) or "services" (including work or performance whatsoever) to be furnished by Seller under this Purchase Order. "Seller" is used to mean "Vendor" or "Supplier" and is used interchangeably during performance hereunder.

6) *Excusable Delays*. The Parties expressly agree that time is of the essence of this purchase order. The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, act of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify USRA in writing as soon as is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to USRA of the cessation of such occurrence.

7) *Invoice*. The Seller shall submit an original invoice to the address designated on the front side of this Purchase Order. An invoice must include -- (1) Name and address of the Seller; (2) Invoice date and identifying invoice number; (3) Purchase Order Number; (4) Description, quantity, unit of measure, unit price and extended price of the item(s) delivered; (5) Shipping number and date of shipment; (6) Terms of any prompt payment discount offered; (7) Name and address of official to whom payment is to be sent; and (8) Name, title, and phone number of person to be notified in event of defective invoice.

8) *Patent Indemnity*. The Seller shall indemnify USRA and its officers, employees, agents and its customers against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Purchase Order, provided the Seller is reasonably notified of such claims and proceedings.

9) *Payment*. Payment shall be made for items accepted by the Buyer that have been delivered to the delivery destinations set forth in this Purchase Order. USRA will make payment in connection with any discount offered on the face sheet of this Order for early payment; time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

10) *Delivery*: (1) The parties expressly agree that time is of the essence and shall remain a material element of this purchase order and no acts of Buyer, including without limitation, modifications to this purchase order or acceptance of late deliveries, shall constitute a waiver of this clause. (2) Seller will deliver acceptable supplies and services in strict conformity with any delivery schedule and shipping instructions set forth in the purchase order issued to Seller by Buyer. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than 10 days prior to require delivery dates. Buyer may return earlier deliveries at Seller's risk and expense, in Buyer's discretion. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as Seller agrees to be reasonably necessary to meet the scheduled without written approval from Buyer's authorized procurement representative. Representatives of Buyer, the Government or both shall at all reasonable times have access to Seller's facility for

the purpose of assuring delivery in accordance with the schedule. (c) If seller is unable to meet the required delivery schedules for any reason other than a change directed by the Buyer, Buyer shall have the option to (1) terminate this purchase order or (2) fill such purchase order or any portion thereof from sources other than Seller and reduce Seller's purchase order quantities accordingly at no increase in unit price, without any penalty to Buyer. Alternatively, the Buyer may require Seller to provide consideration for accepting such late deliveries. Nothing herein shall limit Buyer's rights or remedies under the Uniform Commercial Code."

11) *Risk of Loss*. Unless the Purchase Order specifically provides otherwise, risk of loss or damage to the supplies provided under this Purchase Order shall remain with the Seller until, and shall pass to the Buyer upon: (1) Delivery of conforming supplies to a carrier, if transportation is f.o.b. origin; or (2) Delivery of conforming supplies to the Buyer at the destination specified in the Purchase Order, if transportation is f.o.b. destination.

12) *Taxes*. The Purchase Order price includes all applicable Federal, State, and local taxes and duties.

13) *Termination for the Buyer's Convenience*. USRA reserves the right to terminate this Purchase Order, or any part hereof, for the convenience of the Buyer. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Purchase Order, the Seller shall be paid a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of USRA using its standard record keeping system, have resulted from the termination. This paragraph does not give USRA any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

14) *Termination for Cause*. The Buyer may terminate this Purchase Order, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any Purchase Order terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Buyer shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to the Buyer for any and all rights and remedies provided by law. If it is determined that the Buyer improperly terminated this Purchase Order for default, such termination shall be deemed a termination for convenience.

15) *Title*. Unless specified elsewhere in this Purchase Order, title to items furnished under this Purchase Order shall pass to the Buyer upon acceptance, regardless of when or where the Buyer takes physical possession.

16) *Warranty*. The Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this Purchase Order.

17) *Inspection/Acceptance*. The Vendor/Supplier shall only tender for acceptance those items that conform to the requirements of this Purchase Order. The Buyer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Buyer may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in Purchase Order price. The Buyer must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

18) *Other Compliances*. The Seller warrants that it shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this Purchase Order, including all laws and regulations of the United States relating to export administration. Seller agrees to indemnify USRA against any loss, cost, liability or damage by reason of Seller's violation of any applicable laws, executive Order, or regulation.

19) *Indemnification*. Seller shall indemnify and hold harmless Buyer, its officers and employees from any liability, loss, damage, cost or expense by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with, any act demonstrating fault, negligence or wrongful act or omission of Seller, or of its employees, agents, subcontractors, or lower-tier subcontractors in performing its work under this Purchase Order. Without in any way limiting the foregoing, Seller and its subcontractors and lower-tier subcontractors shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above and shall maintain proper Workman's Compensation Insurance covering all employees performing work pursuant to this Purchase Order.

20) *Liens*. Seller warrants it has title to any goods to be delivered under this purchase order and shall deliver same free of all liens, claims and encumbrances.

21) *Procurement Representative Authorization*. USRA's authorized procurement representative has sole authority to make binding contractual commitments on behalf of USRA, provide contractual direction and change contractual commitments as defined in the Order.

22) *Severability*. If any provision of this Purchase Order, or part thereof, shall be invalid or unenforceable, such provision or part shall be deemed severed, and the remainder hereof shall be given full force and effect.

23) *Non-Waiver*. A Party's failure at any time to enforce any provision of this Order shall not constitute a waiver of that provision or prejudice a Party's right to enforce that provision at any subsequent time.

24) *Governing Law*. This Purchase Order shall be governed by the laws of the state from which USRA's purchase order issued, not including its laws with respect to choice of law

Additional Provisions

This P. O. also incorporates 2 CFR Part 200 et al. and Part 1800 for all supplies or services procured pursuant to a Grant or Cooperative Agreement, if this is identified on the face sheet of this Purchase Order. Purchase Orders for supplies that qualify as commercial items under the FAR, procured pursuant to a U.S Government Contract shall be governed by these terms as supplemented by Addendum 2 (USRA Form 9B-2) thereto when such Addendum is incorporated on the face sheet of the Purchase Order.

