



UNIVERSITY OF CALIFORNIA
LAWRENCE LIVERMORE NATIONAL LABORATORY

GENERAL PROVISIONS FOR COMMERCIAL SUPPLIES AND SERVICES

DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

"Ordered Items" means the commercial items, components, or services, as defined in FAR 52.202-1, ordered under the Purchase Order.

"CFR" means the U. S. Code of Federal Regulations.

"DOE/NNSA" means the U. S. Department of Energy National Nuclear Security Administration.

"Government" means the U.S. Government.

"LLNL" means the Lawrence Livermore National Laboratory.

"Purchase Order" means the purchase order, subcontract, or agreement entered into with the Seller which includes these GENERAL PROVISIONS.

"Seller" means the party who entered into the Purchase Order with the University, as identified in the Purchase Order.

"University" means The Regents of the University of California, acting through the LLNL.

SCOPE OF PURCHASE ORDER

The scope of the Purchase Order shall be limited to the acquisition of commercial items or commercial components, including services, as defined in FAR 52.202-1, and shall not include any research, development, or demonstration work.

The Purchase Order is entered into as a subcontract under the University's Prime Contract No. W-7405-ENG-48 with the Government, represented by the DOE/NNSA, for management and operation of the LLNL and the performance of certain research and development work.

ACCEPTANCE OF PURCHASE ORDER

The Seller's written acceptance of this Purchase Order or the performance of any portion of this Purchase Order shall constitute the Seller's unqualified acceptance of this Purchase Order and all of the Purchase Order's terms and conditions. Any alterations made to the documents comprising this Purchase Order or any conditions imposed by the Seller upon its written acceptance of this Purchase Order are not acceptable and shall constitute a proposal for modification of the Purchase Order only and shall have no effect on the validity or the Seller's acceptance of this Purchase Order and its terms and conditions, anything to the contrary notwithstanding.

In the event the Seller's business status indicated in the Purchase Order or in the Seller's proposal is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the University may cancel the Purchase Order, without further obligation.

SHIPMENTS FOR UNIVERSITY'S ACCOUNT

Except as otherwise provided in the Purchase Order, all shipments by the Seller for the University's account shall be (1) shipped FOB Shipping Point and marked as shipped "For the U. S. Department of Energy;" (2) shipped at the maximum declared value for the lowest applicable transportation rate or classification, and the bill of lading shall so note; and (3) self-insured by the University and not insured by the Seller. Airway bills shall be marked with the appropriate "Government Package" entry. Shipping costs in excess of those per the "Shipping Instructions" specified on the face of this Purchase Order shall be deducted from the Seller's invoice(s).

TITLE AND RISK OF LOSS

Unless otherwise provided in the Purchase Order, title to the Ordered Items purchased under the Purchase Order shall pass directly to the Government upon, and the risk of loss or damage to the Ordered Items shall remain with the Seller until, and shall pass to the University:

If F.O.B. Shipping Point: Upon completion of delivery to the carrier and any loading by the Seller.

If F.O.B. Destination: Upon completion of delivery or commencement of unloading at the delivery point.

PACKAGING INSTRUCTIONS

The Seller shall suitably package the ordered item(s) to prevent damage during handling and shipping. The Seller shall use biodegradable packaging materials, to the extent practicable. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Seller, anything to the contrary notwithstanding. The Seller shall indicate the University Purchase Order number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

INVOICES AND PAYMENT

- A. The Seller shall submit its invoice at the time of final shipment, unless otherwise provided in the Purchase Order. The invoices shall reference the Purchase Order Number and include a complete description of the Ordered Items, prices, and ship dates, and the name of the University's LLNL Procurement Representative. Failure to comply with any of these requirements may result in a delay in payment of the invoices.
- B. Payment shall be made for Ordered Items delivered to the delivery destination specified in the Purchase Order and accepted by the University. Unless otherwise provided in the Purchase Order, the terms of payment shall be 30 days after receipt of the Seller's properly submitted invoice. Any offered discount shall be taken if payment is made within the discount period indicated by the Seller. Payments may be made by check or electronic funds transfer, at the option of the University. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

- A. The Seller shall utilize environmentally preferable products and services, i.e., products and services that have a lesser or reduced effect on human health and the environment, including those with "recovered material," as defined in 48 CFR 2.101 and 11.301, to the maximum extent possible without conflicting with the technical requirements of the Purchase Order or jeopardizing the intended end use of the Ordered Items or services to be furnished under this Purchase Order.
- B. To the extent available, the minimum content standard for high speed copier paper, offset paper forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock used in performing this Purchase Order shall be no less than 30 percent post-consumer material.
- C. The Seller shall notify the University Procurement Representative in writing if an "EPA-designated item," as defined in 48 CFR 23.402, used in performing this Purchase Order does not contain at least the percentage of recovered material required by any applicable specification of this Purchase Order. Such notice shall include a detailed written justification for such failure, on the basis that the item is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

FORCED, CONVICT, AND INDENTURED LABOR

- A. By signing or accepting this Purchase Order, the Seller hereby certifies that no equipment, materials, or supplies furnished to the University pursuant to this Purchase Order will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- B. Any seller contracting with the University who knew or should have known that the equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a contract or subcontract pursuant to the above, may have any or all of the following sanctions imposed: (1) the contract or subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University; or (2) the seller may be removed from consideration for University contracts or subcontracts for at least one year.

INSPECTION

The University reserves the right to inspect all and every part of the Ordered Items under the Purchase Order, during and after completion of performance. The University shall not be obligated to inspect the Ordered Items, and neither the inspection nor the lack of inspection by the University shall relieve the Seller of its responsibility for providing the Ordered Items in accordance with the terms and conditions of the Purchase Order. The inspection or use of or payment for an Ordered Item under the Purchase Order, either wholly or in part, shall not be construed as an acceptance.

If any Ordered Item or any part of it is not in accordance with the terms and conditions of the Purchase Order, the University shall notify the Seller that the Ordered Item is rejected. Thereupon, the Seller shall, at its own expense, take the necessary corrective action. The University shall reject performance or revoke its acceptance of an Ordered Item: (1) within a reasonable time after a defect is discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the Ordered Item, unless the change is due to a defect in the Ordered Item.

CHANGES

The University may direct the Seller to make changes within the general scope of this Purchase Order to (1) any Ordered Items to be specifically manufactured or assembled for the University, or their method of shipment, packaging, or place of delivery; and (2) any services to be performed or their time and place of performance. If any such changes causes an increase or decrease in the cost of, or the time required for, performance of any part of this Purchase Order, the University Procurement Representative shall make an equitable adjustment in the Purchase Order price, the delivery schedule, or both, by a written modification to the Purchase Order. Changes in the terms and conditions of this Purchase Order may be made only by the written agreement of the parties.

QUALITY OF ORDERED ITEMS

- A. The Ordered Items(s), including any materials and supplies furnished or used by the Seller in the performance of any services, shall as a minimum: (1) conform to the requirements of this Purchase Order and be as warranted; (2) be new and not be of such age or so deteriorated as to impair their usefulness or safety; and (3) not contain any counterfeit/suspect items. The furnishing of reconditioned Ordered Items must be specified in the Purchase Order or approved by the University's LLNL Procurement Representative, and shall be warranted the same as new items.
- B. The University will not accept any Ordered Items, including any services involving the furnishing or use of materials or supplies, found by the University to not meet the minimum requirements of paragraph A, above; to be reconditioned; or to constitute suspect/counterfeit items, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the University Procurement Representative. The Seller shall promptly replace such items at its expense with conforming items.
- C. The University will impound any suspect/counterfeit items furnished or used under this Purchase Order and may provide such items to the appropriate authorities for investigation. The University reserves the right to withhold payment for the suspect/counterfeit items pending the results of any such investigation.
- D. A suspect item is any material, part, or component that visual inspection, testing, or other information indicates may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute made without legal right or authority or whose material, performance, or characteristics are knowingly misrepresented by the Seller, supplier, distributor, or manufacturer. Types of known suspect or counterfeit items include, but are not limited to: fasteners, circuit breakers, valves, piping components, electrical devices, plate, bar, shapes, and channel members. Such items may be falsely labeled as a different class of part, or be used or refurbished parts that are falsely represented as new parts.

WARRANTY

The Seller warrants that the Ordered Items will be merchantable and fit for use for the particular purpose described in the Purchase Order and that services performed will be as specified in the descriptions and specifications of this Purchase Order and free from defects in workmanship, material, and Seller's design or engineering contributions. The Seller shall correct any nonconformance with this warranty discovered within one year after acceptance or initial use of the supplies or services. Except as otherwise provided by an express or implied warranty, the Seller will not be liable to the University for consequential damages resulting from any defect or deficiencies in accepted Ordered Items.

LAWS AND REGULATIONS

The Ordered Items shall be designed, produced, sold, and delivered in accordance with, and Seller and its employees and sub-vendors shall at all times comply with, all applicable laws, rules, regulations, and executive orders, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, safety, export control, and environmental protection).

RELEASE OF INFORMATION

The Seller shall coordinate any planned advertisements, news releases, or other public releases of information concerning this Purchase Order, the undertaking, or any data developed hereunder with the University's Procurement Representative prior to release. The Seller may acknowledge the University, the LLNL, and Government sponsorship as appropriate, provided the University's Procurement Representative is provided written notice thereof.

TAX ASSESSMENT NOTIFICATION

The Seller agrees to notify the University of any State or local law tax, fee or charge levied or purported to be levied on or collected from the Seller in connection with this Purchase Order for which an exemption is claimed by the University or concerning which the Seller has reason to believe or the University has advised the Seller that such tax, fee, or charge is or may be inapplicable or invalid. The Seller further agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Seller in any proceedings for the recovery thereof or to sue for recovery in the Seller's name.

ASSIGNMENTS

This Purchase Order may be assigned by the University to the Government or its designee(s).

Except as to assignment of payment due hereunder, the Seller shall have no right, power or authority to sell, mortgage, transfer or assign this Purchase Order, any portion hereof, any interest herein or any claim hereunder, nor allow or permit

any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

DISPUTES

Except as otherwise provided in the Purchase Order, any claim for an equitable adjustment under the Purchase Order not resolved in the ordinary course of business shall be referred in writing to the University Procurement Representative within 30 calendar days of the act, event, or order giving rise to the claim. The Seller must submit its claim for an equitable adjustment, if any, within 30 days from receipt of the directed change, or by such other time as the University Procurement Representative may permit. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Seller shall proceed diligently with the performance of the Purchase Order, in accordance with its terms and conditions.

Any unresolved dispute with a value under \$100,000 relating to the Purchase Order (whether contract, tort, or both), or the breach of the Purchase Order shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.

The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA; (2) the location for all arbitration proceedings shall be in Alameda County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these GENERAL PROVISIONS entitled *GOVERNING LAW AND VENUE*.

BANKRUPTCY

If the Seller enters into any proceeding related to bankruptcy, it shall give written notice to the Buyer via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LLNL purchase orders, subcontracts, or agreements affected.

EXCUSABLE DELAYS

The Seller shall be liable for default unless non-performance 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, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the University in writing as soon as reasonably possible after 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 the University written notice of the cessation of such occurrence.

TERMINATION

The Purchase Order may be terminated by the University at any time, at will, with or without cause, with or without the giving of any reasons, and by giving notice to the Seller at least 15 calendar days before the termination is to be effective.

In the event of a termination by the University, the Seller shall be paid, subject to the terms and conditions of the Purchase Order, a percentage of the Purchase Order price reflecting the percentage of work performed prior to the notice of termination, plus any reasonable charges resulting from the termination which the Seller can substantiate to the satisfaction of the University, using the Seller's standard record keeping system; provided, however, that the total thereof shall not exceed the Purchase Order price. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

If a default occurs under the Purchase Order, and if within 30 calendar days after the non-defaulting party has given the defaulting party notice of the event of default the defaulting party has not cured the default or, if the default cannot be reasonably cured within such time period, if the defaulting party has not commenced the cure within such time period, diligently continued to pursue such cure, and completed it within 45 days after such notice, the non-defaulting party may, at its option, terminate the Purchase Order at any time thereafter upon written notice to the defaulting party. In the event of a termination for default, the non-defaulting party may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these GENERAL PROVISIONS entitled *GOVERNING LAW AND VENUE*.

CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below are incorporated by reference as a part of these GENERAL PROVISIONS with the same force and effect as if they were set forth herein in full text, and shall apply as prescribed below. The referenced FAR and DEAR clauses are respectively located in Title 48, Chapters 1 and 9 of the Code of Federal Regulations. The clause text may be accessed at the following web sites: FAR-<http://www.arnet.gov/far/>; DEAR-<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation>.

As used in the clauses, the term "contract" shall mean the Purchase Order; the term "Contractor" shall mean the Seller; the term "subcontractor" shall mean the Seller's subcontractor, and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.227-1, 52.227-2, 52.227-3, and 52.227-14, and DEAR clause 952.227-14, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE/NNSA Contracting Officer for Prime Contract W-7405-ENG-48 with the University. As used in DEAR clause 952.227-9, the term "DOE" shall mean DOE/NNSA or the University.

The modifications of these clause terms are intended to appropriately identify the parties and establish their contractual and administrative reporting relationship, and shall not apply to the extent they would affect the U.S. Government's rights. The Seller shall include the listed clauses in its subcontracts at any tier for the Ordered Items, including any of its components, to the extent applicable.

APPLICABLE TO ALL PURCHASE ORDERS:

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995) AND ALTERNATE I (OCT 1995), if the PO exceeds \$100,000
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 2003)
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995)
FAR 52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996), if the PO exceeds \$100,000
FAR 52.227-3	PATENT INDEMNITY (APR 1984)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (JUN 1987), with Alternates II, III, & V and Paragraphs (a) & (d)(3) per DEAR 927.409 (DEC 2000) (See also the <i>LIMITED RIGHTS DATA DISCLOSURE PURPOSES</i> clause, below)
DEAR 952.227-14	RIGHTS IN DATA-GENERAL ALTERNATE VI (FEB 1998)
FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987), if the PO is based upon a technical proposal
FAR 52.245-2	GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (JUNE 2003), as modified by DEAR 952.245-2, if any Government Property is furnished by the University

LIMITED RIGHTS DATA DISCLOSURE PURPOSES

Generally, delivery of Limited Rights Data or Restricted Computer Software should not be necessary. If any Limited Rights Data will be furnished or delivered by the Subcontractor or a lower-tier subcontractor pursuant to Sub-paragraph (g)(2) of the FAR 52.227-14 *RIGHT IN DATA – GENERAL* clause of the GENERAL PROVISIONS, the University may disclose the data for the following purposes, which disclosure purposes shall be inserted in the Limited Rights Notice to be affixed to the data:

- A. This "Limited Rights Data" may be disclosed for evaluation purposes under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed;
- B. This "Limited Rights Data" may be disclosed to other contractors participating in the Government's program of which this Subcontract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed; and
- C. This "Limited Rights Data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "Limited Rights Data" be retained in confidence and not be further disclosed.

ENTIRE AGREEMENT

This Purchase Order shall consist of the Purchase Order document, any Special Provisions, these GENERAL PROVISIONS, and any other referenced and incorporated clauses, provisions and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

ORDER OF PRECEDENCE

Any inconsistencies in the terms and conditions comprising the Purchase Order shall be resolved by giving precedence in the following order: (a) the Purchase Order document; (b) these GENERAL PROVISIONS; (c) other referenced documents, exhibits, and attachments; and (d) any referenced specification or statement of work.

DOCUMENTS OF SELLER

The provisions of any quotation or other documents of the Seller referenced in or incorporated as a part of this Purchase Order are referenced or incorporated only for the purpose of specifying the nature of the materials, supplies, or services ordered, the price therefor, and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

GOVERNING LAW AND VENUE

The Purchase Order shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Purchase Order shall be instituted in the State of California in the Superior Court of Alameda County (or in the Superior Court of San Joaquin County if the underlying action occurred at LLNL's Site 300).

(END OF GENERAL PROVISIONS)