

Applied Physical Sciences Corp.
PURCHASE ORDER GENERAL TERMS AND CONDITIONS
November 1, 2004

1. ACCEPTANCE/AGREEMENT

This Purchase Order constitutes Buyer's offer to Seller to purchase the goods and/or services set forth on the first page hereof and shall become a binding contract containing the terms and conditions set forth herein when it is accepted by Seller ("Contract"). Any of the following acts by Seller shall constitute Seller's acceptance of the order, including all of the terms and conditions contained herein: signing and returning a copy of this order; delivery of any of the goods or services ordered; informing the Buyer in any manner of commencement of performance; returning Seller's own form of acknowledgement; or any other form of acknowledgement of this order by Seller (e.g. email confirmation). Acceptance of this offer is expressly limited to the terms of this Purchase Order. No term or condition at variance with this order proposed by Seller in acknowledging or accepting this order will be binding on Buyer unless specifically accepted in writing by Buyer. Any attempted revision or modification of the terms contained herein by Seller not expressly and specifically accepted are hereby objected to. Seller shall not ship under reservation. Acceptance of the goods or services covered by this order will not constitute acceptance by Buyer of Seller's terms and conditions.

2. DELIVERY/SHIPPING

(a) Time is of the essence of this agreement. The dates indicated by Buyer for the goods, material or work to be supplied or performed under this Purchase Order shall have the same importance as the price and quantity. Failure to meet agreed upon delivery shall be considered a breach of the agreement and Seller agrees to pay to Buyer an amount equal to the amount of any penalties or damages imposed upon or incurred by Buyer caused by Seller's failure to deliver articles, materials, or perform work, in accordance with delivery schedules.

(b) If required, shipping instructions will be furnished by Buyer. All items must be suitably packed and prepared and shall comply with carrier regulations for the method of shipment specified. No charges for packing or crating will be paid by Buyer unless otherwise stated in the order. Seller shall give Buyer advance notice of shipment containing the order number, description of item and routing. A complete packing list must accompany each shipment. Unless otherwise specified on the face of this order, shipping shall be FOB Buyer's location on the face of the order and Seller shall bear risk of loss or damage to the goods until delivery to Buyer's location.

3. INSPECTION AND ACCEPTANCE

(a) Buyer and its customer may inspect all goods or work at reasonable times and places. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. Buyer's final inspection and acceptance shall be at destination.

(b) No such inspection or acceptance of work shall relieve Seller of its obligations to furnish Work in accordance with the requirements of this Contract.

(c) If Seller delivers non-conforming Work, Buyer may: (i) accept all or part of such Work at an equitable price reduction and return non-conforming Work to Seller at Seller's expense; (ii) reject such Work and return goods to Seller at Seller's expense; or (iii) make, or have a third party make, all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to Seller.

(d) Seller shall not re-tender rejected Work without disclosing the corrective action taken.

4. INVOICES AND PAYMENT

(a) Individual invoices must be issued for each purchase order. Each invoice must show the order number and should itemize applicable federal excise, state or local taxes separately. If not so itemized, the price or prices will be deemed to include all such taxes and the price or prices will not be changed as a result of Seller's failure to include therein any such applicable tax. Invoices for payment shall be supported by such documents in such form as Buyer may reasonably require and shall bear such certifications as may be required by this order.

(b) Unless otherwise provided, terms of payment shall be net forty five (45) days from the latest of the following: (i) Buyer's receipt of Seller's proper invoice; (ii) Scheduled completion of performance date of the Work; or (iii) Actual completion of performance of the Work. Buyer shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the parties.

(c) Each payment made shall be subject to reduction to the extent of amounts which are found by Seller not to have been properly payable, and shall also be subject to reduction for overpayments.

5. MAINTENANCE OF RECORDS

(a) If Seller is providing services hereunder, Seller shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate Seller's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts and job summaries. Seller shall retain such records for three (3) years from final payment of this Contract.

(b) Buyer shall have access to such records, and any other records Seller is required to maintain under this Contract, for the purpose of audit during normal business hours upon reasonable notice for so long as such records are required to be retained.

6. CHANGES

(a) Buyer may at any time, by written change order, suspend performance in whole or in part, make changes in drawings, designs, specifications, method of shipment or packing, time or place of delivery, or require additional or diminished Work. If any such change causes an increase or decrease in the cost of, or the time required for performance, an equitable adjustment shall be made in the order price or delivery schedule or both, and this order shall be modified accordingly in writing. Any claim by the Seller for such an adjustment must be made within (30) thirty days from the date of receipt by Seller of the change order or shall be unconditionally waived.

(b) Only the Buyer's procurement representative has authority to make changes or amendments to this Contract. Buyer's engineering and technical personnel may, from time to time, render assistance or give technical advice or discuss or effect

an exchange of information with Seller's personnel concerning the Work. No such action shall be deemed to a change under the Changes' clause of this Contract.

7. WARRANTY

(a) Seller warrants that it will perform any services under this Contract with the degree of high professional skill and sound practices and judgment, which is normally exercised by recognized professional firms with respect to services of a similar nature.

(b) Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship and shall consist of new materials. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any non-conforming Work is identified within the warranty period, Seller, at Buyer's option, shall promptly repair, replace, or reperform the Work. Such warranty work will be further warranted for an additional one-year period. Transportation of replacement Work, return of non-conforming Work, and re-performance of Work shall be at Seller's expense. If repair, or replacement or re-performance of Work is not timely, Buyer may elect to return Work for a full credit or refund, or may re-perform, repair, replace, or re-procure the Work at Seller's expense. All warranties shall run to Buyer and its customers.

8. FURNISHED PROPERTY

Buyer may provide to Seller property or materials owned by either Buyer or its customer ("Furnished Property"). Furnished Property shall be used only for the performance of this Contract. Title to Furnished Property shall remain in Buyer or its customer and Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership. Except for reasonable wear and tear, Seller shall be responsible for any loss or damage to Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice. At Buyer's request, and upon completion of this Contract, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

9. SUBCONTRACT

Seller shall not subcontract any part of the Work called for in this Contract without the prior written consent of Buyer.

10. BUYER INFORMATION

(a) Seller shall not reproduce or disclose any information, knowledge, or data of Buyer that Seller may receive or have access to, including proprietary or confidential information of Buyer or of others when in possession of Buyer ("Buyer Information"), without the prior written consent of Buyer. Buyer Information includes, but is not limited to, business plans, marketing information, cost estimates, forecasts, bid and proposal data, financial data, formulae, products, processes, procedures, programs, inventions, systems, or designs. Seller agrees not to use any Buyer Information for any purpose except to perform this Contract.

(b) Buyer information provided to Seller remains the property of Buyer. Within thirty (30) days of the expiration or termination of this Contract or upon the request of Buyer, Seller shall return or certify the destruction of all Buyer Information and any reproductions.

11. INTELLECTUAL PROPERTY

Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

(a) Seller shall assign, convey and transfer to Buyer without any further consideration each and every modification, redesign, invention, discovery, improvement, maskworks, and patent relating to the Work, first conceived, developed, or generated in performance of this Contract and upon request shall execute any required papers and furnish all reasonable assistance to Buyer to vest all right, title and interest in such inventions, discoveries, improvements, maskworks, and patents in Buyer.

(b) All data, copyrights, reports, and works of authorship developed in performance of this Contract shall be the sole property of Buyer, shall be used by Seller solely in Work for Buyer. To the extent that any of the deliverable items may not, by operation of law, be Works made for hire, Seller hereby assigns to Buyer the ownership of copyright in the deliverable items and Buyer shall have the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be available in the deliverable items. Seller agrees to give Buyer or its designees all assistance reasonably required to perfect such rights. Seller warrants the originality of all deliverable items and states that no portion is protected by any copyright or similar right vested in any third party.

(c) Subject to any Seller license terms expressly referenced in the Purchase Order, to the extent that any pre-existing materials are contained in the deliverable items and not owned by Buyer, Seller grants to Buyer an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, use, sell, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof, and (ii) authorize others to do any, some or all of the foregoing.

(d) Seller warrants that the services or goods performed or delivered under this Contract shall not infringe or otherwise violate the intellectual property rights of any third party in the United States and Seller agrees to obtain a no cost license for Buyer, modify the goods so as to be non-infringing, or defend, indemnify, and hold harmless Buyer and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person.

12. GRATUITIES/KICKBACKS

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller to any customer or employee of Buyer for the purpose of obtaining or rewarding favorable treatment as a supplier.

13. INSURANCE/ENTRY ON BUYER'S PROPERTY

(a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain for the performance of this Contract workers' compensation, comprehensive general liability, bodily injury and property damage insurance in

reasonable amounts, and such other insurance as Buyer may require. In addition, Seller and its Subcontractors shall comply with all site requirements, Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any Seller's required insurance, provided however such notice shall not relieve Seller's of its obligations to procure and maintain the required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name Buyer as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of

Buyer under this Contract and is not contributory with any insurance, which Buyer may carry.

"Subcontractor" as used in this clause shall include Seller's subcontractors at any tier. Seller's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.

(b) Seller shall indemnify and hold harmless Buyer, its directors, officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or Subcontractors.

14. COMPLIANCE WITH LAWS; EXPORT CONTROL

(a) Seller shall comply with all federal, state, and local laws, ordinances, rules and regulations in the production of the goods or performance of services provided hereunder. Seller shall be responsible for the cost of obtaining any necessary licenses, permits, pay all fees, and other required charges, and shall comply with all of the guidelines and directives any local, state or federal authority.

(b) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

i. Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

(c) Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employers liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(d) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 at seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Seller agrees to notify Buyer if any deliverable under This Contract is restricted by export control laws or regulations.

15. DEFAULT.

(a) Buyer, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of obligations hereunder and fails to cure any breach thereof within ten (10) days after notice thereof from Buyer. Default involving performance delays shall not be subject to the cure provision.

(b) Seller shall be compensated only for Work actually delivered and accepted. Seller shall continue all work not terminated.

(c) In the event of a termination for default, Seller shall be liable to Buyer for cover costs, in addition to Buyer's other rights and remedies at law or in equity.

(d) If, after termination under paragraph (a), it is determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.

16. TERMINATION FOR CONVENIENCE

Buyer may terminate part or all of this Contract for its convenience by giving written notice to Seller. Upon termination, in accordance with Buyer's written direction, Seller will immediately: (i) Cease work; (ii) Prepare and submit to Buyer an itemization of all completed and partially completed Work; (iii) Deliver to Buyer deliverables satisfactorily completed up to the date of termination at the agreed upon prices in the relevant statement of work; and (iv) Deliver upon request any work in process. Buyer will compensate Seller for the actual, allowable, and reasonable expenses and profit incurred by Seller for work in process up to and including the date of termination provided Seller uses reasonable efforts to mitigate Buyer's liability under this clause.

17. DISPUTES.

All disputes relating to this Contract shall be adjudicated exclusively in the state or federal courts located in the State of Connecticut and Seller hereby consents to the personal jurisdiction of such courts. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by Buyer.

18. LIENS.

Seller agrees to deliver to Buyer the articles covered by this order free and clear of all liens, claims, and encumbrances.

19. INDEMNIFICATION FOR BREACH; REMEDIES

Seller agrees to defend, indemnify and hold Buyer harmless from and against any and claims, losses, costs, including reasonable attorneys, damages or liabilities whatsoever arising from its breach of any of its obligations contained in this Contract. The remedies reserved in this order shall be cumulative and additional to any other or further remedies provided in law or equity.

20. RELATIONSHIP OF THE PARTIES; SELLER PERSONNEL

(a) Seller's relationship to Buyer shall be that of independent Contractor and this Contract does not create an agency, partnership, or joint venture relationship between Buyer and Seller.

(b) Personnel supplied by Seller hereunder shall be deemed employees of Seller and shall not for any purposes be considered employees or agents of Buyer.

(c) Seller will ensure that any Seller personnel assigned to Work on Buyer's or its customer's premises shall comply with any on-premises guidelines.

(d) All persons, property and vehicles entering or leaving Buyer's or its customer's premises shall be subject to search. Seller must coordinate with Buyer access to Buyer's or its customer's premises.

21. APPLICABLE LAW

This Purchase Order and the Contract entered into pursuant to its acceptance by Seller shall be governed and interpreted in accordance with the laws of the State of Connecticut, determined without regard to conflict of laws principles.

22. WAIVER.

Failure of Buyer to enforce any of its rights hereunder shall not constitute a waiver of such rights or any other rights hereunder.

23. SEVERABILITY.

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining paragraphs and provisions of this Contract will remain in full force and effect.

24. NON-ASSIGNMENT.

Seller shall not assign this order or any part hereof without the prior written consent of Buyer and any such attempted assignment shall be null and void.

25. PRECEDENCE.

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Terms on the face of the Purchase Order, including any terms thereon incorporated by reference and any master-type agreement (such as a Buyer subcontract or consulting agreement); (ii) These General Terms and Conditions; and (iii) Any Statement of Work.

26. ELECTRONIC CONTRACTING.

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature or authorization.

27. ENTIRE AGREEMENT.

This Contract integrates, merges, and supersedes, where conflicting, any and all prior offers, communications, negotiations, and agreements, written or oral, concerning the subject matter hereof and, together with exhibits, attachments, referenced documents and any Task Order(s) issued hereunder, constitutes the entire agreement between the parties and may be modified only by a written instrument executed by an authorized agent of Buyer.

28. SPECIAL U.S. GOVERNMENT PROVISIONS.

The provisions set forth below shall apply if the face of this order bears a U.S. Government Contract (Prime Contract) number or is otherwise issued under a U. S. government Contract.

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government contract.

As used in the FAR clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Contract or any Buyer incorporated subcontract or consulting contract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Buyer's government prime contract under which this Contract is entered.
4. "Contractor" means the Seller, as defined in this Contract, acting as the immediate (first tier) subcontractor to Buyer.
5. "Prime Contract" means the contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a contract with the U.S. Government.
6. "Subcontract" means any contract placed by the Contractor or lower-tier subcontractors under this Contract.

C. NOTES

1. Substitute "Buyer" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "Buyer Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and Buyer" after "Government" or "Contracting Officer", as appropriate, throughout this clause.
4. Insert "or Buyer" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through Buyer.

D. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

- (a) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)
- (b) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS (OCT 1997)

- (c) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
- (d) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- (e) 52.222-26 EQUAL OPPORTUNITY (APR 2002)
- (f) 52.225-13 RESTRICTION ON CERTAIN FOREIGN PURCHASES (FEB 2000)
- (g) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DEC 2001)

2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:

- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (DEC 2001)

4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) (Applicable if the Contractor is not a small business.

5. The following FAR clauses apply as indicated:

- (a) 52.205-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work involves access to classified information)

- (b) 52.223-11 OZONE-DEPLETING SUBSTANCES (MAR 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances)

- (c) 52.225-1 BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM – SUPPLIES (FEB 2002) (Applicable if this Contract requires furnishing of Work containing other than domestic components)

- (d) 52.225-5 TRADE AGREEMENTS (FEB 2002) (Applicable if the Work contains other than domestic components)

- (e) 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (DEC 1989) (Applicable if Government property is furnished in the performance of this Contract) the following is added as paragraph (m): "Contractor shall provide to Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system".)

E. CERTIFICATONS AND REPRESENTATIONS

1. This clause contains certifications and representations that are material representations of fact upon which Buyer and Buyer's customers will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of Buyer, or accepting any Contract, Contractor certifies to Buyer and Buyer's customers the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document, or any quotation, request for quotation, (oral or written), request for proposal or solicitation (oral or written), issued by Buyer. Contractor shall immediately notify Buyer of any change of status with regard to these certifications and representations.

2. The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to any order, agreement, or subcontract. In each clause incorporated below, substitute "Buyer" for

"Government" and "Contracting Agency" and "Buyer Procurement Representative" for "Contracting Officer" throughout.

(a) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(1) Contractor certifies that, to the best of its knowledge and belief, that Contractor and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(2) Contractor shall provide immediate written notice to Buyer if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(b) FAR 52.222-22 Previous Contracts and Compliance Reports. Contractor represents that if Contractor has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26) (i) Contractor has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(c) FAR 52.222-25 Affirmative Action Compliance. Contract represents (i) that Contractor has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 DFR 60-1 and 60-2), or (ii) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

END OF CONTRACT