

## AFFOA Purchase Order Terms and Conditions

1. **ACCEPTANCE:** This purchase order shall be deemed accepted by Seller's acknowledging receipt of this order, by Seller's commencement of services or work on the goods ordered, or by Seller's shipment of the goods, whichever first occurs. Any acceptance of this purchase order is limited to acceptance of the express terms and conditions contained within this purchase order. Additional or different terms in Seller's form or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this shall not prevent the formation of a contract between Buyer and Seller unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, and the order shall be deemed accepted by Seller without said additional or different terms.

2. **PRICE:** The prices set forth on this purchase order are not subject to increase and include all applicable taxes and charges. Buyer shall pay approved invoices forty-five (45) days following the invoice date. All travel costs, if any, must be pre-approved, in writing by the Buyer and shall be in accordance with Federal Travel Regulations and per diems.

3. **DELIVERY/ NOTICE OF DELAY:** Time is of the essence and failure to deliver in accordance with the delivery schedule under this order, if unexcused, shall be considered a material breach of this order. No acts of Buyer, including without limitation modifications of this purchase order or acceptance of later deliveries, shall constitute waiver of this provision. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this purchase order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver of the Buyer's rights and remedies hereunder.

4. **EXCUSABLE DELAY:** Seller shall not be liable for failure or delay in making deliveries when such failure or delay is due to any cause beyond its reasonable control and without the fault or negligence of Seller; provided that Seller shall give to Buyer prompt written notice when it appears that such cause will delay deliveries under this order. Buyer may, at its option and without any liability to Seller, cancel by written notice any portions of this order so affected. Buyer may delay delivery and/or acceptance due to any cause beyond its control.

5. **WARRANTY:** With respect to all goods and services purchased hereunder, by acceptance of this order Seller warrants (1) that the goods are of its own manufacture, new, safe, merchantable, of good quality, and free from defects in design, material and workmanship; (2) that Seller has good title to the goods and will convey such good title to Buyer; (3) that the goods conform to specifications, drawings, samples or other descriptions furnished by Buyer and all appropriate standards; (4) that if Seller knows or has reason to know of the particular purpose for which Buyer intends to use the goods, Seller warrants that the goods will be fit for such particular purpose; and (5) that the goods or services will conform to any statements made on the advertisements or labels for such goods or services and that any goods will be adequately contained, packaged, marked, and labeled. These warranties shall be cumulative and in addition to all other warranties, express, implied or statutory, and all warranties shall survive inspection, test, acceptance, payment and use. If any such goods or services shall be defective or otherwise not in conformity herewith, Seller shall, at Buyer's option and in addition to all other remedies of Buyer including reimbursing Buyer for any incidental and consequential damages caused by such non-conforming goods or services, but not limited to costs, expenses and losses incurred by Buyer: (i) in inspecting, sorting, repairing or replacing such goods; (ii) resulting from any production interruptions; (iii) in any recall campaigns or other corrective actions and (iv) for claims for personal injury and property damage, either credit Buyer for any such defect or nonconformity or, at Seller's expense replace, repair, correct, or perform anew any such goods or service. All warranties shall run to Buyer, its successors, assigns, customers and users of its products.

6. **INSPECTION; REJECTION:** Neither receipt of nor payment for the goods or services ordered hereunder shall constitute acceptance. Buyer shall have the right to inspect the goods/services and reject goods/services which it deems defective, damaged, nonconforming or in excess of the quantities ordered. Final acceptance is dependent upon the completion of all applicable inspection procedures. Rejected goods will be held for Seller's instructions at Seller's risk and expense or, at Buyer's option, returned to Seller at Seller's risk and expense. Seller shall refund to Buyer all amounts paid for rejected goods/services or, at Buyer's option, Seller shall replace rejected goods promptly and without expense to Buyer. If any services do not conform with the requirements of the order, the Buyer may require Seller to perform again in conformity, with no additional payment. Nothing herein shall relieve the Seller from the obligation of testing, inspection and quality control. These remedies in no way limit the remedies available to the Buyer.

7. **BUYER'S PROPERTY/SHIPPING:** Title to and the right to immediate possession of any property, including all equipment or material, furnished or paid for by Buyer shall remain in Buyer or Buyer's customer, as applicable. Seller shall, at its own expense, maintain such property in good condition and shall be responsible for all loss and damage thereto while in its possession and shall use the same only for the production of goods or the performance of services for Buyer. If Seller fails to return such property upon buyer's demand, Buyer shall have the right, upon reasonable notice, to invoice Seller for the cost of replacement of the property. Seller shall maintain insurance on such property covering all risks in amounts equal to the replacement cost and shall indemnify Buyer or Buyer's customer, as applicable, for the full repair or replacement cost, at Buyer's option, of any lost or damaged property. Seller shall be responsible for ensuring the proper packaging of deliverables, hereunder and deliverables shall be properly packaged for shipment at the F.O.B. origin at no additional cost to Buyer.

8. **CHANGES:** Buyer shall have the right at any time to make changes in services to be rendered, goods to be furnished or the time and place of delivery and method of transportation upon written notice to Seller. If any such change causes an increase or decrease in the cost of or time required for the performance hereunder, an equitable adjustment shall be made in the price and/or delivery schedule. Any claim for adjustment by the Seller shall be deemed waived unless asserted in writing within 30 days from receipt by Seller of the change notice.

9. **TERMINATION:** Buyer may terminate this order or any part hereof for its sole convenience. Upon such termination, Seller shall immediately stop all work and cause any of its suppliers or subcontractors to cease work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination, provided it submits proof of such costs within 30 days after notice of termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could have reasonably avoided. Buyer may also terminate this order or any part hereof in the event of any default by Seller, including late deliveries, deliveries of defective or nonconforming goods or services, or failure to provide Buyer, upon request, with reasonable assurances of future performance. In the event of such termination, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all direct, indirect, special, incidental and consequential damages sustained by reason of the default.

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10. **CONFIDENTIALITY:** Seller shall keep confidential all drawings, specifications, inventions, technical information and data furnished by Buyer and shall not disclose such information except as required for the efficient performance of this order, and then only to persons who have bound by similar terms of confidentiality. Seller shall return all such information and all copies thereof to Buyer upon Buyer's request. Seller shall not, without written consent of the Buyer, publish, distribute or use any information developed under or about the existence of this purchase order or use Buyer's name or trademarks or in any manner publish the fact that Buyer has placed this order. To the extent that any data is produced by the Seller in the analysis of Buyer's materials or property under this purchase order, such data shall be considered proprietary confidential data embodying trade secrets of the Buyer. Seller shall mark such data with appropriate restrictive notices. Seller may reproduce and use such data under suitable protective conditions with the express limitation that the data will not, without the written permission of the Buyer, be used for purposes of manufacture or disclosed to any third party. All other rights in such data shall revert to Buyer.

11. **INDEMNIFICATION; INSURANCE:** Seller shall indemnify and hold harmless Buyer, its successors, assigns, customers, directors, officers, employees and agents against any and all liability, costs, expenses (including reasonable attorneys' fees), damages, claims, and causes of action arising out of the manufacture or sale of the goods or services ordered, by any breach of Seller's warranties with respect to such goods or services, by any negligent act or omission of Seller, or arising out of the performance of any work or other activity by Seller, its subcontractors and agents on Buyer's premises, and upon the tendering of any such suit or claim to Seller to defend the same at Seller's expense. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claim.

Seller shall maintain, and require its subcontractors and agents to maintain, insurance coverage, including comprehensive general liability with limits not less than \$1,000,000 per occurrence for bodily injury, \$1,000,000 general aggregate and \$1,000,000 products aggregate, as well as \$1,000,000 per occurrence for property damage, automobile liability insurance with limits not less than \$500,000 per occurrence for property damage and worker's compensation insurance as required by law. Seller shall furnish on Buyer's request insurer's certificates evidencing such insurance which expressly provide that the insuring company will give thirty (30) days prior written notice to Buyer of the cancellation or expiration of such insurance.

12. **INFRINGEMENT:** Seller shall indemnify Buyer, its successors, assigns, customers and the users of the goods and hold them harmless from any and all costs, expenses (including reasonable attorneys' fees), liability, damages, losses, royalties and license fees arising from any suit or claim of infringement of any patent, copyright, trademark or trade name by reason of the manufacture, sale or use of the goods, including any settlement. Upon the tendering of any such suit or claim to Seller, Seller shall defend the same at Seller's expense. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claim.

13. **LIMITATION ON LIABILITY:** THE LIABILITY OF EITHER PARTY FOR DAMAGES FROM ANY CAUSE RELATED TO OR ARISING OUT OF THIS PURCHASE ORDER, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO ACTUAL (EXCLUDING SPECIAL, INDIRECT, PUNITIVE, LOSS PROFITS, OR CONSEQUENTIAL) DAMAGES. ANY ACTION BY SELLER ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE SCHEDULED DATE OF DELIVERY OF THE GOODS OR SERVICES ORDERED. BUYER'S LIABILITY ON ANY CLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER SHALL IN NO CASE EXCEED TWICE THE PURCHASE PRICE OF THE GOODS OR SERVICES WHICH GIVE RISE TO THE CLAIM.

14. **COMPLIANCE:** Seller agrees to comply with all applicable provisions of federal, state and local laws, orders, rules and regulations and warrants that all goods and services supplied hereunder will be produced or provided in compliance with the same, if applicable. Upon Buyer's request, Seller will provide written certification of compliance with such provisions, if applicable. If this purchase order references a government contract number, Seller agrees to comply with all applicable provisions of said contract, including the flow down clauses written below and any additional flow down clauses required by the Buyer's prime award (a copy of additional provisions will be provided on Seller's request); all such provisions are hereby incorporated herein by reference, including: The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799); and Section 106 (g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104, as implemented by 2 CFR 175). In addition, the Seller may not discriminate: on the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195; on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90; on the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56; or, on the basis of sex or blindness, in Title IX of the Educational Amendments of 1972 (20 U.S.C. 1681, et seq.).

15. **INDEPENDENT CONTRACTOR:** Seller warrants and agrees that if services are provided under this purchase order, that it and its employees, subcontractors and vendors are not employees of the Buyer, and that no withholding shall be made from any sums due for services hereunder for FICA, federal income taxes, or state or local unemployment insurance or taxes, and that Seller is not covered by Buyer's Workers' Compensation Insurance.

16. **GENERAL:** a. The contract arising pursuant to this order shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions. b. No part of this order may be assigned or subcontracted without prior written approval of Buyer. c. Buyer's failure to insist on performance of any of the terms and conditions of this order or exercise any right shall not be deemed a waiver unless in writing and signed by Buyer. A waiver on one occasion shall not thereafter operate as a waiver of any other terms, conditions or rights, whether of the same or similar type. d. Buyer shall have the right to set off against any amounts which are due or may become due to Seller any amounts which Seller may owe to Buyer under this purchase order or otherwise. e. Buyer's remedies provided herein shall be cumulative and in addition to any other remedies provided by law or in equity. f. If any provision of this purchase order is found invalid, illegal or unenforceable by law the remainder of this purchase order will remain valid, enforceable and in full force and effect. g. This purchase order and any documents referred to on the front hereof constitute the entire agreement between Buyer and Seller and may not be modified except by a written document signed by Buyer.