

**SwRI General Purchase Order Terms and Conditions  
(Commercial)  
Rev. 04-2023**

As used in this Purchase Order the term “Buyer” or “SwRI” shall mean Southwest Research Institute®, and the term “Seller” shall mean the entity identified on the face of this Purchase Order. Buyer and Seller shall hereinafter collectively be referred to as the “Parties” and individually as a “Party”.

**1. ACCEPTANCE OF PURCHASE ORDER**

This Purchase Order is Buyer’s offer to Seller for the equipment, materials, parts, and/or items specified on this Purchase Order (“Goods”) and the work to be performed by Seller in connection with the project (“Services”) hereunder and, together with any attachments specifically incorporated herein by reference, contains the entire agreement between Buyer and Seller with respect to such Goods and Services, and supersedes any other agreements or understanding made between the Parties to the date hereof. This offer shall become a contract on the terms and conditions stated herein when it is accepted by Seller by either acknowledgement or performance. No additional, differing, or conflicting terms and conditions proposed by Seller, including, but not limited to, those contained in any acknowledgement, quote, proposal, or invoice are acceptable to Buyer and are hereby specifically rejected. No change, modification or revision of this Purchase Order shall be valid unless in writing signed by Buyer.

Either Party may execute this Purchase Order and any additional documents including, but not limited to, modifications, change orders and representations and certifications related to this Purchase Order by facsimile or electronic signature. The other Party shall be entitled to rely on such facsimile or electronic signature as evidence that this Purchase Order has been duly executed by an authorized representative. Further, neither Party shall contest the validity of this Purchase Order based on the use of facsimile or electronic signatures.

**2. PACKING AND SHIPPING**

All Goods shall be suitably packed to protect from loss or damage, in conformance with good commercial practice, and prepared for shipment to secure lowest transportation rates and comply with carrier regulations, otherwise the difference in packing, crating and cartage, as the case may be, will be charged to Seller. No charges will be paid by Buyer for packing, crating or cartage unless stated in the Purchase Order. All shipments to be forwarded on one day via one route must be consolidated.

**3. DELIVERY**

Deliveries shall be strictly in accordance with the schedule and requirements set out or referred to in the Purchase Order and in exact quantities. If Seller’s deliveries will not meet such schedule, Buyer may request Seller to ship via routing necessary to meet schedule or recover time lost by non-delivery on schedule, and the difference between revised routing and order routing costs shall be paid by Seller. Time is of the essence, and failure by Seller to complete delivery within the time specified shall constitute a breach of this agreement, and shall at Buyer’s option without liability, in addition to Buyer’s other rights and remedies, relieve Buyer of any obligation to accept and pay for any such material or work.

**4. PRICES, INVOICES AND PAYMENT**

Seller shall sell to Buyer the Goods and Services shown in this Purchase Order at the prices specified. Seller warrants that the prices stated herein are not in excess of prices quoted or prices charged to any other purchaser in similar quantities for the same Goods or Services. Seller represents and warrants that it will timely invoice Buyer for its purchase of Goods or Services and that Buyer is not obligated to pay for any Goods or Services identified in invoices that Buyer receives more than ninety (90) days after receiving the Goods or Services, regardless of whether Buyer actually accepted such Goods or Services. Unless otherwise provided in this Purchase Order, no invoices shall be issued nor payments made prior to delivery or performance. Individual invoices must be issued for each shipment under this Purchase Order. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. All payments are subject to adjustment for shortage or rejection.

Copies of all invoices shall be forwarded to SwRI via electronic mail at [ap@swri.org](mailto:ap@swri.org), using the address 6220 Culebra Road, San Antonio, Texas 78238-5166, Attn: Accounts Payable, and shall reference the Purchase Order number.

Seller shall take the following action in the case of any duplicate financing or invoice payment, or if Buyer has otherwise overpaid Seller:

- a. Remit overpayment amount to Buyer with a description of overpayment including:
  - i. Circumstances of the overpayment (e.g., duplicate payment, erroneous payment liquidation errors, etc.);
  - ii. Date(s) of overpayment;
  - iii. Purchase Order number affected;
  - iv. Affected contract line item or sub-line item, if applicable, and Seller point of contact.
- b. Provide a copy of the remittance and supporting documentation to Buyer.

## 5. WARRANTIES

(A) **Goods.** Seller warrants: (i) all Goods delivered under this Purchase Order will be free from defects in material and workmanship, will strictly conform to applicable specifications, design criteria, descriptions, drawings and other requirements described or referenced in this Purchase Order or provided to Seller, and to the extent such items are not manufactured pursuant to detailed designs furnished by Buyer, will be free from defects in design and suitable for the intended purposes; (ii) unless otherwise stated on the face of this Purchase Order, all Goods delivered under this Purchase Order are new, have not been previously used and are not former Government surplus property; (iii) all Goods delivered under this Purchase Order shall be free of all liens, encumbrances and other claims against title; and (iv) all Goods herein described and the sale thereof do not, and the use of the same for their intended purposes will not, constitute infringement or contributory infringement of any patent, copyright or trademark, or violation of any trade secret; and (v) all Goods do not use or incorporate any freeware, shareware or open source software, unless otherwise specified or approved by Buyer.

In addition, Seller warrants and certifies that: (i) all Goods supplied or delivered to Buyer under this Purchase Order do not contain one or more identified Conflict Minerals (including but not limited to, coltan, niobium, tantalum, tin, gold, or tungsten), as defined under the Dodd-Frank Wall Street Reform and Consumer Protection Act; (ii) sub-suppliers from whom Seller purchases items do not sell items that contain one or more identified Conflict Minerals; and (iii) if the Goods that Seller supplies or delivers to Buyer do contain one or more identified Conflict Minerals, such Conflict Minerals do NOT originate from the Democratic Republic of Congo or an adjoining country. In the event the Goods Seller supplies or delivers to Buyer contain one or more identified Conflict Minerals, then Seller shall immediately notify Buyer of such.

(B) **Services.** Seller warrants: (i) the Services shall be performed diligently and carefully in accordance with the degree of skill normally exercised by recognized professional persons or firms which supply services of a similar nature; and (ii) all Services will be free from defects and conform to the requirements of this Purchase Order.

(C) The warranties contained herein are in addition to and shall not be construed as restricting or limiting any warranties of Seller, expressed or implied, which are provided or exist by operation of law. The warranties of Seller shall run to Buyer and its customers.

## 6. INSPECTION AND REJECTION

All Goods and Services are subject to final inspection and acceptance by Buyer, notwithstanding any prior payment or inspection, and such inspection shall be made within a reasonable time after delivery or performance. Acceptance of any Goods or Services by Buyer shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer and its customers under the Warranties clause. Seller shall promptly notify Buyer of any actual or potential problem with Goods previously delivered to Buyer upon becoming aware of such problem.

Buyer shall notify Seller if any Goods delivered or Services performed hereunder are rejected and at Buyer's election and Seller's risk and expense, such Goods shall be held by Buyer or returned to Seller. Non-conforming Goods or Services shall be replaced, corrected or re-performed at Seller's expense. No replacement of non-conforming Goods or Services shall be made by Seller unless agreed to in writing by Buyer.

## 7. CHANGES

Buyer may at any time by written notice make changes within the general scope of this Purchase Order to drawings and specifications, shipping instructions, quantities, and delivery schedule. Should any such change increase or decrease the cost of, or the time required for, performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be made. Any claims for adjustment by Seller must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon.

## 8. TITLE AND RISK OF LOSS

(A) Unless otherwise provided in this Purchase Order, Seller shall have title to and bear the risk of any loss of or damage to the Goods purchased hereunder until they are delivered in conformity with this Purchase Order at the FOB point specified on the face hereof, and upon such delivery title shall pass from Seller to Buyer and Seller's responsibility for loss or damage shall cease except for loss or damage resulting from Seller's negligence or failure to comply with this Purchase Order. Passing of title upon such delivery shall not constitute acceptance of the Goods by Buyer.

(B) Unless otherwise provided in this Purchase Order, Seller upon delivery to it or manufacture or acquisition by it, of any materials, parts, special tooling or other property, assumes the risk of and shall be responsible for any loss thereof or damage thereto. Seller, in accordance with the provisions of this Purchase Order, but in any event upon completion thereof, shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except to the extent that such property has been incorporated in Goods delivered under this Purchase Order, or has been consumed in normal performance of work under this Purchase Order. "Special Tooling" as herein used includes all special tools, jigs, fixtures, drawings, dies, molds, and patterns acquired or manufactured by Seller for use in the performance of this Purchase Order, and does not include any standard or perishable tooling, gauges, or measuring instruments.

## 9. STOP WORK ORDER

Buyer may at any time by written order require Seller to stop all, or any part, of the work under this Purchase Order. Upon receipt of such notice, Seller shall take all reasonable steps to minimize the incurrence of costs allocable to the work under this Purchase Order. Within ninety (90) days of the stop work order, Buyer will either cancel the stop work order or terminate the work covered by the order.

## 10. TERMINATION AND DEFAULTS

(A) **Termination for Convenience.** Buyer may terminate this Purchase Order in whole or in part at any time for Buyer's convenience without liability to Seller except payment for performance rendered and accepted by Buyer up to the effective date of termination. Buyer shall provide written notice of termination for convenience to Seller specifying the extent of the termination and the effective date. Seller shall continue the work not terminated.

(B) **Termination for Default.** Buyer may terminate this Purchase Order for Seller's default upon: (i) any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller; (ii) the appointment, with or without Seller's consent, of a receiver or an assignee for the benefit of creditors; (iii) Seller's failure to perform work under the Purchase Order within the time specified in this Purchase Order or

any extension mutually agreed to in writing by the Parties, (iv) Seller's failure to prosecute the work so as to endanger performance of this Purchase Order; or (v) Seller's failure to perform any of the other provisions of this Purchase Order. Buyer's right to terminate this Purchase Order for default may be exercised if Seller does not cure such default within ten (10) days after receipt of the notice from Buyer specifying the reason. In the event Buyer terminates this Purchase Order for default under this clause, Seller shall be liable to Buyer for any procurement costs for the Goods and Services under this Purchase Order. Waiver by Buyer of any default by Seller shall not be deemed a waiver of any other default.

#### **11. USE OF DESIGNS, DATA, ETC.**

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 production of Goods under this Purchase Order or other orders from Buyer, and not otherwise, unless Buyer's written consent is first obtained. Upon completion or termination of this Purchase Order, Seller shall return all such items to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

#### **12. INDEMNIFICATION AGAINST INFRINGEMENT**

Seller agrees to indemnify Buyer, its successors, assigns, customers and agents from any and all costs, expenses and damages on account of any claim that any of the Goods or Services delivered under this Purchase Order (except those made to Buyer's detailed designs) infringes any United States Letters Patent, copyright or trademark, or that the same is a violation of any trade secret. Seller shall be notified promptly of each such claim and, to the extent of Buyer's right so to do, shall be offered control of the defense and settlement of any such claim.

#### **13. NOTICE OF LABOR DISPUTE**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Seller shall require of any subcontractor of any material or work hereunder the same or substantially the same obligation as that contained herein.

#### **14. PUBLICITY**

No news release, advertisement, public announcement, denial or confirmation of same relating to any part of the subject matter of this Purchase Order or any phase of any program hereunder or containing any reference to Buyer or any of its employees, shall be made directly or indirectly without prior written approval of Buyer.

#### **15. SUBCONTRACTING OR ASSIGNING**

Neither this Purchase Order nor the obligations of Seller hereunder shall be subcontracted, assigned or delegated by operation of law or otherwise without Buyer's prior written consent.

#### **16. COMPLIANCE WITH LAW**

Seller shall comply with all applicable federal, state, and local laws, regulations, and ordinances. Seller will indemnify and hold Buyer harmless from and against any claims, demands, suits, losses, damages, costs or expenses arising out of any non-compliance violation by Seller of any such laws, regulations and/or ordinances. Seller has and shall maintain in effect all applicable licenses, permissions, authorizations, consents, and permits needed to carry out its obligations under this Purchase Order.

#### **17. GOVERNING LAW**

The Purchase Order incorporating these terms and conditions and the performance of the parties hereunder shall be construed in accordance with and governed by the law of the State of Texas. The Seller consents to

the jurisdiction of all state and federal courts sitting in Bexar County, Texas and agrees venue for any legal proceeding arising out of or relating to this Purchase Order shall be exclusively in such courts without regard to choice of law principles. The rights and obligations of the Parties under this Purchase Order shall not be governed by the provisions of the 1980 United Nations Convention on International Sale of Goods.

## **18. INDEMNIFICATION AND HOLD HARMLESS**

**SELLER SHALL DEFEND AND FOREVER INDEMNIFY, RELEASE, AND HOLD HARMLESS BUYER, ITS AGENTS AND EMPLOYEES FROM ANY AND ALL CAUSE OR CAUSES OF ACTION, INCLUDING PERSONAL INJURY, ILLNESS, DEATH, AND PROPERTY DAMAGE, COSTS, CHARGES, FINES, CLAIMS, DEMANDS, AND LIABILITIES OF WHATEVER KIND, NAME OR NATURE, ARISING FROM OR RELATING TO SELLER'S PERFORMANCE, OR FAILURE TO PERFORM HEREUNDER, INCLUDING BUT NOT LIMITED TO FAILURE TO COMPLY WITH ALL EXHIBITS ATTACHED HERETO, AS APPLICABLE, AND HOWSOEVER THE SAME BE CAUSED; EXCEPT AS A RESULT OF THE SOLE NEGLIGENCE OF BUYER.**

**SELLER SHALL HOLD AND SAVE HARMLESS, DEFEND AND INDEMNIFY BUYER AND ANY AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, ATTORNEYS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM ANY AND ALL CLAIMS, LIABILITIES, SUITS, ACTIONS, FINES, PENALTIES, CONTINGENT CLAIMS, COUNTERCLAIMS OR THIRD PARTY CLAIMS (COLLECTIVELY "CLAIMS") AS A RESULT OF OR IN CONNECTION WITH CLAIMS ARISING FROM OR INCIDENT TO SELLER'S:**

- a. FAILURE TO OBTAIN ALL NECESSARY APPROVALS, LICENSES, PERMITS OR REGISTRATIONS FOR THE SERVICES AND/OR GOOD PROVIDED TO BUYER OR PRODUCED ON BEHALF OF BUYER, INCLUDING BUT NOT LIMITED TO THOSE ISSUED BY THE APPROPRIATE GOVERNMENT AGENCY; OR**
- b. VIOLATION OF APPLICABLE FEDERAL, STATE OR LOCAL STATUTES, REGULATIONS OR EXECUTIVE ORDERS.**

## **19. SELLER INSURANCE**

Seller shall comply with the insurance requirements contained in Exhibit A, Purchase Order Insurance Requirements, attached to this Purchase Order and incorporated herein, and shall provide a certificate of insurance meeting these requirements prior to the start of work. Failure to comply may result in delay of payment.

## **20. FOREIGN PERSONNEL**

By acceptance of this Purchase Order for the performance of Services required, the Seller agrees and covenants that the following conditions are met:

(A) All personnel assigned to this Purchase Order have all required work permits, appropriate export licenses, and security clearances necessary to perform the work as applicable. Seller shall produce such records upon Buyer's request; and

(B) Seller's personnel who will receive information or provide Services under this Purchase Order controlled under applicable U.S. export laws and regulations shall be lawful permanent residents of the United States or protected individuals as defined by 8 U.S.C. sections 1101 and 1324.

## **21. CONFIDENTIALITY**

Seller agrees it will retain in confidence and not use or disclose to others any of Buyer's trade secrets, confidential information, know-how, data or other information acquired by, or disclosed to Seller by or on behalf of Buyer.

## **22. DATA SECURITY**

Seller shall provide adequate security, including policies, procedures, products and systems, to protect information provided by Buyer and comply with any law, contractual obligation, or regulation applicable to such information. If Seller becomes aware of any actual or probable compromise of its system which affects the confidentiality, integrity, or availability of information used in the performance of this Purchase Order or provided by Buyer including, but not limited to, unauthorized access, acquisition, use, disclosure, loss, destruction, or alteration of such information (“Security Incident”), then Seller shall notify Buyer within 72 hours after learning of the Security Incident and shall take immediate actions to investigate and mitigate the Security Incident and any associated risks. Seller shall cooperate with Buyer in any investigation regarding any Security Incident. Seller shall bear responsibility for any costs incurred for any Security Incident investigation, mitigation, remedies, or notifications. Seller shall encrypt any information provided by Buyer that is identified as proprietary or subject to restrictions on public disclosure by law or regulation if such information: (i) is transmitted via the Internet, or (ii) is potentially accessible by unauthorized entities during electronic storage or transfer outside of Seller’s established security boundary. The provisions of this clause are in addition to and do not alter, change or supersede any obligations contained in a confidentiality agreement signed by the Parties.

## **23. LIEN RELEASE**

The Seller shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the work, the site or any amounts due or to become due to the Seller under this Purchase Order. If any lien, charge or claim is so asserted, the Seller shall promptly procure its release and indemnify the Buyer against all damage and expense incident thereto. Upon completion of the work and before any final payment and settlement, the Seller shall provide evidence satisfactory to the Buyer of payment and release of debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, subcontractors and sub-subcontractors.

## **24. COUNTERFEIT WORK**

(A) The following definitions apply to this clause:

(i) “Counterfeit Work” means work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(ii) “Suspect Counterfeit Work” means work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the work part is authentic.

(B) Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work to Buyer under this Purchase Order.

(C) Seller shall only purchase products to be delivered or incorporated as work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Seller may use another source only if (i) the foregoing sources are unavailable, (ii) Seller’s inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the work, and (iii) Seller obtains the advance written approval of Buyer.

(D) Seller shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in this Purchase Order.

(E) Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware that it has delivered Counterfeit work or Suspect Counterfeit work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. Seller, at its expense, shall provide reasonable cooperation to Buyer in conducting any investigation regarding the delivery of Counterfeit work or Suspect Counterfeit work under this Purchase Order.

(F) This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Purchase Order addressing the authenticity of work.

(G) In the event that work delivered under this Purchase Order constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine work conforming to the requirements of this Purchase Order. Notwithstanding any other provision in this Purchase Order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of installing replacement work and any testing necessitated by the reinstallation of work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of this Purchase Order.

(H) Seller shall include paragraphs (A) through (G) and this paragraph (H) of this clause or equivalent provisions in lower tier subcontracts for delivery of items that will be included in or furnished as work to Buyer.

## **25. SALES TAX EXEMPTION CERTIFICATE**

Buyer claims an exemption from payment of Texas sales and use taxes for the purchase of taxable Goods and Services described on the face of this Purchase Order. Buyer claims this exemption because Buyer is a non-profit organization that qualifies under Section 151.310 of the Texas Tax Code. Accordingly, Buyer will provide a Texas Sales and Use Tax Exemption Certificate. Buyer may also provide an exemption certificate for delivery/use in other states on a case-by-case basis.

## **26. INDEPENDENT CONTRACTOR**

Seller's and Buyer's respective relationship in all matters related to this Purchase Order shall be as independent contractor and not as employee, agent or servant. Seller shall obey all federal, state, and local safety and health regulations in the performance of the Services to be supplied hereunder, and while on the premises of the Buyer.

## **27. CONFORMITY, SAFETY, AND ETHICS**

Seller shall comply with process conformity and safety, and understand the importance of ethical behavior when performing Services or providing Goods to Buyer. Seller warrants that it is not aware presently of any facts that indicate to it that entering into this Purchase Order will conflict with any obligations Seller may have under any other contracts, agreements or obligations.

## **28. TRAVEL EXPENSES**

Reimbursement of travel expenses shall only be considered for actual costs incurred and must be accompanied by itemized receipts, including receipts for meal expenses when per diem is exceeded. Travel expenses for lodging and per diem (including meals and incidentals must be in compliance with current Federal Travel Regulation (FTR) and FAR and must not exceed GSA per diem rates for applicable lodging location(s) at the time of travel. Airfare will be reimbursed for the lowest priced airfare available to the Seller during normal business hours and travelers must use the least expensive compact car available, unless an exception for another class of vehicle is approved by Buyer in writing. Travelers will not be reimbursed for purchasing pre-paid refueling options for rental cars. Reimbursement for personal vehicle usage/mileage shall be in accordance with the current FTR mileage rate at the time of travel. If the mileage is over 50 miles one way, a map to support mileage will be required.

## **29. CONSTRUCTION AND/OR SERVICES PERFORMED ON BUYER'S PREMISES**

If Seller is performing construction and/or other services on a premises owned or controlled by Buyer, Seller shall comply with all safety, security and environmental requirements set forth in Exhibit B, Terms and

Conditions for Construction and Service Work Performed on Buyer Property, attached to this Purchase Order and incorporated herein.

### **30. FORCE MAJEURE**

A delay in or failure of either Party to perform its obligations hereunder as described shall not constitute default under this Purchase Order nor give rise to any claim for damage if and to the extent such delay or failure is caused by occurrences beyond the control of the Party affected, including but not limited to, whether direct or indirect: acts of God; expropriation or confiscation of facilities or compliance with any order or request of any governmental authority or person purporting to act therefor which affects to a degree not presently existing the supply, availability or use of materials or labor; acts of war or the public enemy; public disorders, rebellion, or sabotage; floods; riots; strikes; pandemics or outbreak of a disease; or any causes whether or not the class or kind specifically named above, not within the control of the Party affected and which, by the exercise of reasonable diligence, said Party is unable to prevent, mitigate or remove.

The affected Party shall give written notice within three (3) business days of the force majeure event to the other Party, stating the period of time the occurrence is expected to continue. The affected Party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the affected Party's delay or failure remains unchanged for a period of thirty (30) days following written notice given by it hereunder, either Party may terminate this Purchase Order upon ten (10) days written notice.

### **31. EXPORT CONTROL**

Seller agrees that it shall comply with all applicable United States export control and economic sanctions laws and regulations. Seller understands that the direct or indirect export, reexport, retransfer, transfer (in-country), sale, lease, or supply, or any other access to or use of the technical data/technology, software, or equipment provided by Buyer, or the direct product thereof, to or in another country or to a non-U.S. person may require a license or other authorization from the Government of the United States; and agrees that it will comply with any such license or authorization requirements.

Seller represents and warrants it is eligible to receive items regulated by the Export Administration Regulations, and that neither Seller nor any of its direct or indirect owners, officers, directors, employees, affiliates, agents, representatives, suppliers, or subcontractors are subject to U.S. sanctions or other export restrictions. Seller must immediately notify Buyer, in writing, of any change that may impact the representation and warranty above.

If Seller is engaged in the business of either exporting or manufacturing defense articles or furnishing defense services, Seller represents it is registered with the Office of Defense Trade Controls as required by the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130).

Notwithstanding any other provision in this Purchase Order, Buyer shall have the right to terminate this Purchase order upon the determination by Buyer that Seller has breached, intends to breach, or insist upon breaching any of the provisions in this clause. Under such circumstances, Buyer shall be released from responsibility for fulfilling its obligations under this Purchase Order.

Seller shall indemnify and hold harmless Buyer from and against any and all damages, claims, allegations, losses, liabilities, penalties, fines, costs, and expense including attorney's fees, which arise out of, related to, or result from Seller's failure to comply with the provisions of this clause or any applicable export control or sanctions laws or regulations.



**Exhibit A**  
**Purchase Order Insurance Requirements**  
**Rev. 10-2021**

Southwest Research Institute (Buyer) requires of the Seller that the following minimum insurance coverage be maintained for the duration of this Purchase Order. In lieu of insurance coverage below, Seller may, with the prior written approval of Buyer, satisfy the requirements below by maintaining a program of self-insurance at levels authorized under the applicable self-insurance laws of its State, and shall provide sufficient evidence of such authorization to Buyer.

If Seller is a University State Entity, it may, with prior notice to Buyer, satisfy the requirements below with self-insurance and/or state-funded insurance programs to the extent permitted by any governing state or federal statute or constitutional provision, and shall provide sufficient evidence of such compliance to Buyer.

**INSURANCE**

**A. Seller's Liability Insurance**

The Seller must provide at its own expense and shall maintain for the duration of this Purchase Order:

**1. Workers' Compensation and Employer's Liability Insurance:**

The Seller shall maintain Workers' Compensation Insurance, in accordance with the applicable laws or regulations having jurisdiction (or applicable Social Scheme if foreign) over its employees regardless of whether such coverage or insurance is mandatory or merely elective under the law, and Employer's Liability Insurance for its employees with minimum limits of not less than the following:

<u>\$1,000,000</u>	Bodily Injury by Accident, Each Accident
<u>\$1,000,000</u>	Bodily Injury by Disease, Policy Limit
<u>\$1,000,000</u>	Bodily Injury by Disease, Each Employee

To the extent allowed by law, such policy shall provide for a Waiver of Subrogation in favor of Buyer, and Buyer's customer where required by Buyer's Agreement with its customer.

**2. Commercial General Liability Insurance:**

The Seller shall maintain Commercial General Liability or Public/Civil Liability Insurance (if foreign) covering all operations by or on behalf of Seller, including Bodily Injury and Property Damage Coverage, Premises Liability Coverage, Products & Completed Operations Coverage, Contractual Liability Coverage that supports the insurable liability assumed by Seller, Cross Liability and Severability of Interest Coverage, and Independent Contractor's Liability Coverage with limits not less than the following:

<u>\$1,000,000</u>	Each Occurrence
<u>\$1,000,000</u>	Personal & Advertising Injury
<u>\$2,000,000</u>	General Aggregate
<u>\$2,000,000</u>	Products – Completed/Operations Aggregate

Such insurance shall provide coverage for action-over liability claims. To the extent allowed by law, such policy shall provide for a Waiver of Subrogation in favor of Buyer and its customer where required by Buyer's Agreement with its customer, and shall include Buyer and its customer (where required) as Additional Insured(s) for liability arising out of or relating to Seller's work, services, completed operations, and/or product(s).

**3. Business Automobile Insurance:**

If vehicles are utilized as part of services provided, the Seller shall maintain Business Automobile Insurance for all vehicles, whether owned, non-owned, rented, hired, leased, borrowed, assigned to or used in connection with the Services under this Purchase Order with a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage Liability. To the extent allowed by law, such policy shall provide for a Waiver of Subrogation in favor of Buyer and its customer where required by Buyer's Agreement with its customer, and shall include Buyer and its customer (where required) as Additional Insured(s).

Umbrella/Excess Liability Insurance policy(ies) may be used in combination with primary policies to satisfy limit requirements. Such policy(ies) shall apply without any gaps in the limits of coverage and be at least as broad as and follows the form of underlying primary coverages required herein.

**4. Professional Liability/Technology Errors & Omissions Liability/Cyber and/or Network & Data Privacy Liability:**

The Seller shall maintain appropriate Professional Liability insurance covering damages incurred by Buyer or Buyer's customer as a result of Seller's acts, errors or omissions arising out of, or failure to render, its professional services with minimum limits of \$1,000,000 per claim. Professional services may include, but are not limited to design work, engineering services, laboratory services, consulting services, specialty technology services, computer programming services, technology related products/services, software design, rendering of data or reports, access to Buyer's or Buyer's customers' data, information and/or proprietary content.

**B. Special Operations Coverage**

Should any of the work or services:

1. Involve the use of aircraft (fixed wing or helicopter) owned, operated, or chartered, Seller shall provide Aircraft & Passenger Liability Insurance covering Bodily Injury (including passengers) and Property Damage Liability with a combined single limit of not less than \$10,000,000 each occurrence. Such policy shall provide for a Waiver of Subrogation-Physical Damage in favor of Buyer and include Buyer as Additional Insured.
2. Involve investigation, removal or remedial action concerning the actual or threatened escape of hazardous substances or pollutants, Seller shall provide Pollution Legal Liability Insurance in an amount not less than \$2,000,000 per occurrence.
3. Involve transporting hazardous substances, Seller shall carry Business Automobile Liability Insurance covering liability arising out of the transportation of hazardous materials in an amount not less than \$2,000,000 per occurrence with Broadened Pollution Coverage (upset/overturn/collision) Endorsement included. Such policy shall also include Motor Carrier Endorsement MCS-90.
4. Involve treatment, storage or disposal of hazardous materials/wastes or pollutants, Seller shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current Environmental Liability Insurance in the amount of not less than \$5,000,000 per occurrence.
5. Involve access to or use of Buyer's information technology hardware and/or software, or otherwise control the Buyer's data, Seller shall provide Network Security Liability Insurance of not less than \$1,000,000 per occurrence for claims arising out of unauthorized access or use of computer data, theft of data, denial of network service, or malicious code.
6. Involve access to monies/securities, Seller shall provide Fidelity/Crime Insurance of not less than \$1,000,000 per occurrence.
7. Involve the use of cranes, heavy lift equipment, or rigging, Seller shall provide liability insurance of not less than \$1,000,000 per occurrence and/or accident for Bodily Injury and Property Damage resulting from crane or rigging operations. Such coverage may be provided under its Commercial General Liability insurance coverage, but must be evidenced on the Certificate of Insurance.
8. Involve the selling or serving of liquor, Seller shall provide Liquor Liability Insurance of not less than \$1,000,000 per occurrence. To the extent allowed by law, such policy shall provide for a Waiver of Subrogation in favor of Buyer, and shall include Buyer as an Additional Insured.

### **C. General Insurance Requirements**

1. The insurance policies must be underwritten by a company licensed in the state where work is to be performed, and carry a minimum Best's rating of "A-VI" or better. All coverages shall be primary and non-contributory to any insurance coverages maintained by Buyer.
2. Seller, or Seller's authorized representative shall provide thirty (30) days prior written notice to Buyer in the event of cancellation (except 10 days for non-payment) or material change (reduction/restriction) in coverage.
3. The certificate of insurance shall evidence all the above required terms and conditions and required endorsements.
4. Certificates of Insurance shall be filed with the Buyer for approval prior to commencing any work, and thereafter prior to policy expiration. Failure to furnish the required certificates within ten (10) days of "notice to proceed" shall not be considered cause for modification of any contractual time limits.
5. If subcontractors are utilized, Seller is to ensure such subcontractors are in compliance with the above requirements by providing the appropriate certificate of insurance to Buyer. Seller assumes liability for loss as a result of any subcontractor's uninsured and/or underinsured exposures.
6. If any policies providing the required coverages are written on a claims-made basis, the following applies:
  - a) The retroactive date shall be prior to the commencement of the work.
  - b) Seller shall maintain such policies on a continuous basis.
  - c) If there is a change in insurance companies or policies are canceled or not renewed, Seller shall purchase extended reporting period of not less than three (3) years after the contract completion date, or maintain retroactive date prior to commencement of work on new policy.

**Please have your Insurance Agent forward the required certificates and endorsements via electronic mail to:**

[SwRIVendorCOI@swri.org](mailto:SwRIVendorCOI@swri.org)  
Southwest Research Institute  
Attn: Director, Purchasing  
6220 Culebra Road  
San Antonio, Texas 78238

**EXHIBIT B**  
**TERMS AND CONDITIONS FOR CONSTRUCTION AND SERVICE WORK PERFORMED ON BUYER**  
**PROPERTY**  
**Rev. 04-2023**

The following terms and conditions are hereby made a part of this Purchase Order for construction and service work performed by Seller on Buyer property. For purposes of this exhibit, the term Seller shall include entities that have contracted either directly or indirectly (i.e., subcontractors) with Buyer to perform services or work related to the property, facilities, or buildings, owned or leased by Buyer. Suppliers and subcontractors to the Seller shall be bound to the Seller by the terms of this Purchase Order. Seller must make copies of these terms available to Seller's subcontractors prior to Seller's subcontractors starting work and must assure that Seller's subcontractors abide by the requirements outlined herein.

**BUYER'S FACILITIES DEPARTMENT**

Buyer's Facilities Department ("Facilities") is responsible for all construction activities on Buyer's property. All work will be performed under the administration of Facilities, or its designated representative, i.e. Consultant, Architect or Engineer. Seller must coordinate the work or services in existing facilities with a designated representative from Facilities prior to beginning work.

Approval of pay requests, submittals, changes, etc., is the responsibility of Facilities. Requests for approval will be made to the Owner or the designated representative. No payments shall be made for any requests or changes without prior authorization by Facilities.

**SELLER**

Seller must comply with all applicable federal, state, and local laws, regulations, ordinances, and building codes and must include all required fees in the Purchase Order amount (Contract Sum). Seller must abide by the requirements of any Buyer sign or notice posted that requires the use of specific personal protective equipment, that restricts access to qualified or authorized persons only, or that establishes other requirements for entry.

Seller is responsible for (1) controlling the means and methods by which it and its employees perform the work or service on Buyer's property; (2) independently ascertaining what health, safety, and environmental practices are appropriate and necessary for the performance of such work or services; and (3) initiating, maintaining, supervising, and enforcing all safety precautions and programs in connection with the work under this Purchase Order that complies with all rules, regulations and industry standards, including permits, governing the Seller and the work.

Seller must provide all labor, materials, tools, construction equipment and machinery, and other facilities and services necessary for the execution and completion of the work. Buyer will not loan or otherwise provide tools or other equipment to Seller or Seller's subcontractors. Seller equipment must be in good condition and Seller must follow manufacturer's guidelines in proper use.

Seller must establish controls to restrict unauthorized access to work zones, and ensure that requirements for entry are clearly posted at all access points. Seller work areas will be kept clean and neat at all times. At the end of each shift, equipment and materials must properly be stored. Seller must remove and properly dispose of trash from all work areas daily or at the end of each shift.

**SELLER ENVIRONMENTAL AND SAFETY GUIDELINES**

**Emergency Response/Spills**

In the event of a medical emergency, fire, chemical/fuel spill or other hazardous condition, Seller must immediately notify Buyer Security by calling **210-522-2222** to initiate a response from Buyer personnel and emergency responders, if appropriate. A "spill" is defined as an abnormal release of a substance that could possibly cause an adverse effect on the environment or people in the general area. When a spill occurs, Seller must report the location, identity, and amount of spilled material (if known) and if there are immediate

environmental or safety hazards (e.g., exposed personnel, fire or material entering sewers). If the spill is of a reportable quantity, then Buyer must notify governmental officials within 24 hours.

### **SAFETY REQUIREMENTS**

Buyer's Environmental and Safety Systems Department ("ESS")

Phone: 210-522-2221

Seller must comply with all applicable federal, state, and local safety and human health regulations.

#### **Traffic Control**

Where traffic diversion is necessary, Seller must provide appropriate signage and coordinate through Buyer's Security Department. Barricades and/or warning devices that alert others of construction hazards must be used to control traffic, both vehicular and pedestrian, safely through or around the work site. Yellow caution tape and/or cones are appropriate for temporary use (<48 hrs) or in an emergency.

#### **Roof Access and Fall Protection**

Buyer's Facilities must be contacted prior to Seller going on any roof. Seller must use appropriate fall protection equipment when a fall hazard is present in accordance with OSHA standards.

#### **Lockout/Tagout (LO/TO)**

Seller must discuss the shutdown of equipment/systems and utilities with Facilities before starting work. At no time shall a Seller or its employees override any locks or tags encountered during the performance of work. Seller shall develop, implement and maintain a Lockout/Tagout program in accordance with OSHA regulations, use their own locks and keys, and make such program available for examination upon request by Buyer. Whenever Seller and Buyer personnel must perform overlapping LO/TO, both LO/TO programs must be coordinated to comply with the Buyer's LO/TO program.

#### **Electric Work**

Seller shall ensure that only qualified Electricians work on Buyer electrical systems and equipment. All work shall be conducted in accordance with OSHA regulations and the National Fire Protection Association (NFPA) 70E Standard for Electrical Safety in the Workplace. Seller should not leave electrical boxes, switch gear, cabinets, or electrical rooms open when unattended. Seller shall coordinate requests for shutdowns and/or power outages with Buyer's Facilities. Under no circumstances shall utilities be shut off without a minimum 24-hour prior approval by Facility Operations and the Division representative.

#### **Fire Protection and Suppression Systems**

Seller must not conduct any work that disables or alters the functionality or technical specifications of fire protection or suppression systems without prior approval from Facilities. Sprinkler heads must have eighteen (18) inches of clearance at all times. If authorization is granted to disable a system, a temporary system shall be provided by the Seller to ensure the safety of building occupants.

#### **Hot Work**

Hot work (welding, cutting and brazing) activities must be authorized and permitted by Facilities in accordance with Buyer's Hot Work Program (ESS-P219.01), which will be provided to Seller upon request. Before beginning any hot work, Seller must develop, implement and maintain its own Hot Work Program in accordance with OSHA regulations. Seller must use a hot work permit for each separate work activity and must ensure that the conditions of the permit are met at all times.

#### **Asbestos and Suspect Asbestos Containing Materials**

Some Buyer buildings contain asbestos in various forms. Before starting work in any building Seller shall consult Facilities who will arrange for the known asbestos information to be provided to Seller. It is possible that asbestos may be found which is not in the survey. Seller upon encountering any asbestos shall cease all operations and notify Facilities for necessary action.

## **Confined Spaces**

Before entering any confined space, Seller shall develop, implement and maintain its own Confined Space Entry Program, including a permit system and provisions for emergency rescue, in accordance with all safety regulations. Seller is required to provide its own rescue equipment, air monitors, ventilation fans, personal protective equipment, communication equipment, adequate lighting equipment, barriers and shields and/or equipment for safe egress, etc. to safely complete confined space entries. Sellers who are required to enter into any confined space on Buyer's property shall be required to have successfully completed an OSHA compliant Confined Space Entry training course on Permit and Non-Permit entries prior to performing this task and certify completion utilizing the Buyer form ESS-F217.03, *Non-SwRI Employee Confined Space Training Certification* form. Seller shall provide at least 24-hour advance notice to Facilities before Seller personnel will be working in a confined space on Buyer's property.

## **Compressed Gasses**

Should the leaking contents of the cylinder present a fire or health hazard, evacuate the area, notify others nearby, and contact Security (210) 522-2222. All cylinders belonging to Seller must be removed from Buyer property when Seller's work is complete.

## **Mobile Cranes**

Each crane, rigging, or hoist brought onto Buyer's property must have an annual inspection performed by a certified testing agency. Documentation, including a logbook, must be provided to Buyer upon request. Crane operators must possess a valid National Commission for the Certification of Crane Operators License or equivalent, which is kept at the work site. Seller must ensure that the crane, swing radius, and load path is properly barricaded to prevent personnel from being injured by the crane or load. Lifts must not be made above staff, visitors, other Sellers, or the public. Lifts over occupied facilities may only be made after consultation with and approval by Facilities and ESS.

## **Trenching and Excavations**

Seller must follow the OSHA standard for trenching and excavation. Seller must notify Facilities prior to any excavation work, driving of spikes/stakes into the ground, or drilling to confirm that utility locations have been determined and demarcated. Facilities approval is required before excavation may begin. Excavations 5 feet or more in depth that will be entered must be shored, sloped, or have a protective system in use. The excavator will use non-mechanical means (hand-digging) when digging within 18 inches of a marked underground utility. Utilities must be supported within an excavation to prevent collapse. Adjacent structures must be shored and/or protected in accordance with the design documents to prevent collapse. Fall protection should be installed around the perimeter of the excavation.

## **ENVIRONMENTAL REQUIREMENTS**

Buyer's Environmental Policy is available to Sellers through the Buyer's web site ([www.swri.org](http://www.swri.org)). Sellers working on-site are required to conform to Buyer's environmental requirements as outlined below.

### **Containment of Chemicals, Fuels, and Oils**

#### **Raw Materials and Waste**

Secondary containment must be provided for the following:

1. Raw materials (fuel, oil, solvents, antifreeze, etc.);
2. Liquid and solid industrial / hazardous waste; and
3. Wastewater.

Secondary containment must consist of sealed concrete, welded metal containers, or preformed chemical-resistant plastic containers designed for chemical containment. Seller should consider covering containments to prevent rain/sleet and debris from accumulating.

## Equipment

All equipment must be maintained in good working order and checked for fluid leaks prior to operation on each shift. All leaks found must be repaired prior to utilizing the equipment. Measures must be taken to ensure spills are prevented during fueling operations. Oil changes must be done so that the oil is drained into a containment pan located inside a containment area.

## **Refrigerant Systems**

Seller must coordinate with Buyer's Heating, Ventilation, and Air Conditioning section within the Facility prior to commencing work on any refrigerant-containing system(s) or equipment. Contact 210-522-2106 for more information.

## **Wastewater Discharge**

Seller must not dump or discharge wastewater or other liquid wastes, including paint or paint-related equipment wash water, into or onto any of the following:

1. Ground or roof;
2. Storm water system via trenches, manholes, sumps, sewer connections, and ditches; or
3. Restrooms, sinks, floor drains, and other sanitary wastewater connections.

Seller must obtain approval from ESS prior to disposing of any wastewater in the sanitary sewer system. Stormwater collected in Seller secondary containment is considered wastewater and must be managed as wastewater.

## **Chemical Identification**

Seller must label all raw material containers with the contents of the container and Seller's name. The Seller shall develop or have their own Hazard Communication Plan that complies with 29 CFR 1910.1200. The Seller shall have copies of Safety Data Sheets (SDS) on-site and available for review for all hazardous materials stored or used on Buyer's property. The Seller may request and review SDSs for any materials that they may encounter on Buyer's property during the performance of work.

The volume of chemicals brought on-site must be strictly limited to what is needed for immediate use. Deliveries should be coordinated by Seller "just in time" for use to avoid prolonged storage periods. Seller must remove all unused raw materials and empty containers from the work site prior to vacating.

## **Waste Management/Disposal**

Seller must adhere to federal, state, and local environmental regulatory requirements, as well as Buyer rules and policies, regarding waste management and disposal. Disposal requirements may be decided prior to commencement of work, depending on the job scope. It is Seller's responsibility to provide advanced notice of the amount, type, and timing of the waste generation by contacting Buyer's ESS at (210)522-2221.

Seller must ensure waste is segregated into the following categories and manage the waste accordingly:

- Hazardous (e.g., fuels, acids, aerosol cans)
- Universal (e.g., light bulbs, batteries, paint/paint related waste)
- Class I Nonhazardous (e.g., contaminated soils)
- Class II Nonhazardous (e.g., general trash)
- Construction Debris (e.g., brick, concrete)
- Recyclables (e.g., metal, cardboard, wood, used oil, plastics, etc.)

Seller must ensure that waste containers are:

- Properly labeled;
- Compatible with the waste generated;
- Kept closed except when adding waste (e.g., drums: bungs on closed-top and lids with rings on open-top must be in place and tightened); and
- Inspected daily for leaks, signs of corrosion, or damage.

Any improperly labeled, leaking, damaged, or corroded containers must be immediately remedied or properly managed as waste. Seller is liable for any corrective actions and disposal costs.

### **Water Supply**

In order to protect Buyer's public drinking water system from contamination and pollution that could result from improper system construction or configuration, Sellers must follow the most current City of San Antonio Plumbing Code practices during construction and installation. In addition, Seller must comply with the following unacceptable practices that are prohibited by the State of Texas:

- No direct connection between Buyer's water supply and a potential source of contamination is permitted. Potential sources of contamination must be isolated from the public water system by an air-gap or an appropriate backflow prevention device.
- No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply must be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.
- No connection which allows water to be returned to the public drinking water supply is permitted.
- No pipe or pipe fitting which contains more than 0.25% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.
- No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

Seller must immediately remove or adequately isolate any potential cross-connections or other potential contamination hazards and, at the Seller's expense, must properly install, test, and maintain any backflow prevention device required by Buyer. Copies of all testing and maintenance records must be provided to Buyer upon request. If the Seller fails to comply with these restrictions, Buyer may, at its discretion, terminate this Purchase Order. Seller is liable for any expenses associated with the enforcement of these terms.

### **Additional Seller Responsibilities**

- Close all chemical, waste, and material containers when not actively in use.
- No open-bucket soaking of parts or equipment unless only water is used.
- No outdoor spraying of paint or chemicals.
- No outdoor washing of paint equipment or discharge to ground surface.
- All outdoor activities which may affect air or water quality must be approved by Buyer's ESS.