

AM GENERAL LLC

Terms and Conditions of Purchase
For

COMMERCIAL (FAR PART 12) ITEMS

1. This Order constitutes the entire agreement between the parties hereto and the terms and conditions set forth herein cannot be modified or amended without the written consent of the Buyer. No officer, employee or other representative of Buyer is authorized to make any oral contract or commitment for the purchase of materials or to modify or change the terms and conditions of this Order unless such modification or change is in writing approved by Buyer's Executive Director Supply Management.

2. Time of delivery of this Order is of the essence and Buyer reserves the right to cancel this Order without liability and without waiver of any other remedies if delivery is not effected as specified herein or on written shipping authorizations which will be furnished by the Buyer. Such written shipping authorizations shall be deemed to be incorporated herein and made a part hereof.

3. Seller expressly warrants that all material and work covered by this Order will in all respects conform to the specifications, drawings, samples or other description furnished or specified by Buyer. Seller warrants to Buyer, its successors and customers that all articles furnished will be free from defects, latent or otherwise in material and workmanship. Seller also warrants that if such material and work is the product of Seller and is in accordance with Seller's specifications, it will be fit and sufficient for the purposes intended.

4. Materials purchased are subject to Buyer's inspection and approval at destination. If rejected, material will be returned for credit or replacement at Seller's risk, and all handling and transportation expenses both ways shall be assumed by Seller. No material returned as defective shall be replaced without authorization from Buyer. Payment for material on this Order prior to inspection shall not constitute an acceptance thereof.

5. For purposes of this Order, the term Intellectual Property shall mean patented and unpatented inventions, mask works, copyrighted works, trade secrets, technical data, know-how, and proprietary information (hereinafter "Intellectual Property").

A. Buyer shall own any Intellectual Property invented, authored, or developed by Seller in the performance of this Order, and Seller shall (i) execute all documents necessary to perfect Buyer's title in such Intellectual Property, including, but not limited to, assignments of all right, title, and interest Seller may have in such Intellectual Property; (ii) obligate Seller's employees and/or contractors involved in the invention or development of such Intellectual Property to execute all documents necessary to perfect Buyer's title in such Intellectual Property, including, but not limited to, inventor's declarations and assignments of all right, title, and interest such employees may have in such Intellectual Property; and (iii) obtain for Buyer all such executed documents as set forth in section (ii) above. Buyer hereby grants Seller a nonexclusive, royalty-free, irrevocable, worldwide right and license to use Intellectual Property invented, authored, or developed by Seller in the performance of this Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other counties in which Seller may have rights in such Intellectual Property) products, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Seller's requirements and responsibilities under this Order. Seller hereby grants Buyer

a nonexclusive, royalty-free, irrevocable, worldwide right and license to use Intellectual Property owned, invented, authored, or developed by Seller prior to the date of this Order that relates to the Products delivered or services performed by Seller under this Order, and to make, have made, use, sell, offer for sale, or import into the United States (and all other countries in which Seller may have rights in such Intellectual Property) products, processes, services, or inventions incorporating or embodying such Intellectual Property, for the sole purpose of fulfilling Buyer's requirements and responsibilities relating to this Order.

B. Seller warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material, software, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark or other proprietary rights. Seller shall indemnify and save Buyer and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) growing out of claims, suits, or actions alleging such infringement, including proceedings under 28 USC § 1498, which claims, suits, or actions Seller agrees to defend at Seller's sole expense on behalf of Buyer and Buyer's indemnitees. Buyer agrees to give Seller notice of any such suit or action promptly after notice is received by Buyer and Seller agrees to conduct, at its own expense, the entire defense thereof; provided, however, that Buyer may, at its own election and expense, at any time supersede Seller in any such defense in which event Seller shall thereby be released from its obligation to defend Buyer under this paragraph with respect to the particular suit or action involved.

C. If this Order is placed under a United States Government Prime Contract or subcontract, the indemnification set forth above shall extend to the United States of America only if and to the extent that the United States of America is or may be indemnified by Buyer.

D. Seller may replace or modify infringing goods with comparable goods acceptable to Buyer of substantially the same form, fit, and function so as to remove the source of infringement, and shall extend this provision to such comparable goods. If the use or sale of any of the above items is enjoined as a result of such claim, suit, or action, Seller, at no expense to Buyer, shall obtain for Buyer and Buyer's customers the right to use and sell the items.

6. No charge for packaging, crating or boxing will be allowed, unless specified on the face of this Order.

7. The Seller shall not be responsible for delays in deliveries, if occasioned by causes beyond the control and without the fault or negligence of the Seller, including but not restricted to acts of God or of the public enemy, acts of the Government (including, but not restricted to, any preference, priority or allocation order), fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes, provided that the Seller shall give the Buyer prompt notice of any cause that will result in such delay.

8. Buyer shall have the right at any time, by written direction of Buyer's Executive Director Supply Management, that identifies such writing as an amendment, modification, or change to this Order, to (i) suspend all or any portion of Seller's work or (ii) to make changes within the general scope of this Order that affect any one or more of the following:

A. drawings, designs, specifications, or quantities of materials or services to be provided hereunder;

- B. the statement of work or description of services;
- C. method of shipment or packing;
- D. the time or place of performance, inspection, delivery, or acceptance of materials or of services; and
- E. the amount of Buyer-furnished or customer-furnished property or facilities.

If any such suspension or change causes a change in the cost of, or the time required for, performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Order shall be modified in writing accordingly. Any claim by Seller for such an adjustment must be made within ten days from the date of receipt of a written order from Buyer's Executive Director Supply Management directing such a suspension or change.

Nothing in this clause, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding with this Order as changed. Any disagreement between the parties arising out of this clause shall be resolved in accordance with Article 11 of this Order.

If this Order is placed under a Government Prime Contract, the pricing of any equitable adjustment hereunder, or of any other adjustment under this Order, shall be in accordance with the cost principles enunciated in Part 31 of the Federal Acquisition Regulation in effect on the date of this Order.

No constructive changes: Information, advice, approvals, or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights or obligations and shall not be actions within the meaning of this "Changes" clause.

9. Information, including but not limited to technical information, drawings, and data, submitted at any time by Seller to Buyer relating to goods or services covered by this Order are deemed not to be submitted in confidence unless otherwise specifically agreed to in writing. Any restrictive markings affixed upon any such information furnished to Buyer shall be of no force or effect, may be modified, removed or ignored by Buyer without any liability to Seller and the information may be used by Buyer in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Buyer, its successors, subsidiaries, licensees, affiliates, or parents shall be determined only by valid pre-existing patent rights of Seller as related to the manufacture, use or sale of goods or services covered by this Order. Seller agrees to promptly notify Buyer of any pre-existing patents or any other form of protection which Seller may hold or know of which relate to the goods or services to be provided under this Order.

10. Buyer may forthwith cancel the contract resulting from the acceptance of this Order in the event of the happening of any of the following: insolvency of the Seller; the filing of a voluntary petition in bankruptcy by the Seller; the filing of any involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Seller, and provided such appointment is not vacated within thirty (30) days from the date of such appointment; or the execution by Seller of an assignment for the benefit of creditors. The exercise by Buyer of the right of cancellation reserved in this paragraph shall not impose any liability upon Buyer by reason of the cancellation nor have the effect of waiving damages to which the Buyer might otherwise be entitled.

11. The parties agree to attempt to settle amicably any dispute related to this Order. If the parties do not reach agreement, Seller shall request a final decision from Buyer's Executive Director Supply Management. If Seller does not accept Buyer's decision, within ninety (90) days thereof, Seller agrees to provide Buyer a formal written statement on the subject of the dispute. If thereafter the parties are unable to resolve their dispute, the dispute shall be adjudicated in a court of competent jurisdiction in the State of Indiana.

Pending final decision of any dispute hereunder, the Seller shall proceed with performance of the Order. If the dispute arises out of a difference in interpretation between the parties as to the performance requirements of the Order, then Seller shall continue performance in accordance with the interpretation of performance as determined by the Buyer.

12. If, by a final decision, the Contracting Officer of Buyer's Government Prime Contract interprets any provision or requirement of Buyer's Prime Contract (including exhibits, appendices, and attachments thereto and documents referred to therein), and the same or substantially similar provision or requirement is contained in this Order (including exhibits, appendices, and attachments thereto and documents referred to therein), such interpretation shall be binding between Buyer and Seller, provided that Buyer affords Seller the opportunity to appeal such decision in Buyer's name. Seller agrees to provide to Buyer any and all information requested by Buyer to justify Buyer's verifying, supporting, or providing any and all certificates required by the Contract Disputes Act of 1978, 41 U.S.C. Section 601 et seq. Any such appeal brought by Seller shall be at the sole expense of Seller, who shall be solely responsible for the prosecution of such appeal. If Seller so appeals, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation, and opportunity to participate in the appeal as Buyer may request. As used in this provision, the term "appeal" shall include any and all proceedings taken by Seller under this provision before any board of contract appeals or federal courts.

If Seller asserts against Buyer a claim for either damages or an equitable adjustment in a situation where the facts constituting such claim would also support a claim by Buyer against Buyer's customer, prior to initiating any action or suit on such claim against Buyer in any court, if Buyer so authorizes, Seller shall pursue, to exhaustion of its administrative and judicial remedies, such claim in Buyer's name and at Seller's cost against Buyer's customer.

Any reference to the "Disputes" clause in any applicable FAR or DFARS clause incorporated into this Order shall mean this article.

13. The Buyer may, subject to the terms and conditions of this clause, by written notice of default to the Seller, terminate this Order in whole or in part if the Seller fails to —

- A. Deliver the supplies or to perform the services within the time specified in this Order or any extension;
- B. Perform any of the other provisions or meet any of the requirements of this Order;
- C. Make progress so as to endanger performance of this Order (see following paragraph);

The Buyer's rights to terminate this Order under subdivisions B and C above, may be exercised if the Seller does not cure such failure within 10 days (or more if authorized in writing by the

Buyer) after receipt of the notice from the Buyer specifying the failure. No such cure notice or period is required for a termination under subdivision A above.

If the Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner the Buyer considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Buyer for any excess costs for those supplies or services. The Seller shall continue the work not terminated.

If this Order is terminated in whole or in part for default, the Buyer may require the Seller to transfer the title and deliver to the Buyer, as directed by the Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of the Buyer, the Seller shall also protect and preserve property in its possession in which the Buyer has an interest.

The Buyer shall pay the Order price for completed supplies delivered and accepted. The Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under Article 11. The Buyer may withhold from these amounts any sum the Buyer determines to be necessary to protect the Buyer against loss because of outstanding liens or claims of former lien holders.

The rights and remedies of the Buyer in this clause are in addition to any other rights and remedies provided by law, including the U.C.C. as adopted by the State of Indiana, or in equity, or under this Order.

14. Buyer, by written notice, may terminate this Order at any time, in whole or in part, when it is in Buyer's interest, and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or been in default in performance, Buyer and Seller shall have all rights and obligations accruing both at law or in equity, including Buyer's rights to title and possession of goods paid for. Seller shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.

Seller's obligations under the warranty, intellectual property, and proprietary rights provisions of this Order shall survive any termination.

15. Any right or remedy expressly conferred on the Buyer herein shall not limit or modify any right or remedy which the Buyer would otherwise have. When shipments to places other than the Buyer's plant are authorized, Seller's invoices will be paid by Buyer at the time specified on the face hereof but not before acknowledgment of receipt of shipment by the consignee.

16. This contract may not be assigned by Seller without the written consent of the Buyer.

17. By making shipment under this Order, Seller agrees and declares that it has complied with and has not violated in any way the Child Labor provisions of the Fair Labor Standards Act of 1949, as amended.

18. Shipment of any of the materials specified on the face hereof shall constitute acceptance of all of the terms and conditions of this Order irrespective of whether Seller has returned the acknowledgment copy.

19. Buyer shall be entitled to any discounts allowable by Seller for prompt payment even though Buyer is unable to make payment within the time limits set by seller where such failure is due to strike or other causes beyond the control of Buyer.

20. Non-discrimination: By Acceptance of this Order, Seller certifies that it will comply with all applicable provisions of E.O.11246 and E.O.11375, as amended; the Vietnam Era Veterans Readjustment Act of 1974; E.O.11701; The Rehabilitation Act of 1973; E.O.11758 and the rules, regulations and relevant orders of the Secretary of Labor.

21. Seller agrees to defend, indemnify and save harmless Buyer from any and all claims, suits liabilities, damages, or expenses asserted against or incurred by Buyer by reason of the use of Seller's product by customers of Buyer or others, and seller agrees to secure suitable products and contractual liability insurance coverage providing for the investigation, defense and settlement of any such claims or suits and to furnish Buyer with Certificates of Insurance evidencing same.

22. Neither the final payment nor any part of the retained percentage shall become due until Seller shall deliver to Buyer waivers of liens from all Seller's Subcontractors providing for a complete release of all possible liens arising out of this Contract, or receipts in full in lieu thereof; and, in either case a notarized affidavit stating that said releases and receipts cover all materials and labor incorporated in the work for which a lien might be filed. The Seller may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Buyer, to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Seller shall refund to Buyer all moneys that Buyer may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

23. Buyer will not solicit and Seller shall not provide, any gifts or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value, or compensation), of any kind which is provided directly or indirectly to any employee of Buyer for the purpose of improperly obtaining or rewarding favorable treatment in connection with award of a purchase order or subcontract.

Seller shall report in writing any solicitation or suspected solicitation of gifts or gratuities by Buyer's employees to the Executive Director Supply Management.

24. The Seller warrants the items sold pursuant to this Order, and their performance when installed, will conform to the requirements of the Occupational Safety and Health Act of 1970 as amended and all regulations and standards formulated thereunder and any State requirements related thereto F-1589 SBR7 (11/02).

25. Seller will comply with all applicable United States and foreign laws and regulations concerning export control and sanctions. Seller shall not export, directly or indirectly, any technical data or products received from Buyer, or the direct product of such technical data acquired from Buyer, under this Agreement except in compliance with the applicable export control and sanctions laws and regulations of the United States and any foreign country, including obtaining any necessary license or approvals.

26. The following clauses from the Federal Acquisition Regulation (FAR) apply to this purchase and are incorporated by reference herein with the same force and effect as if they are given in full text. As used within the clauses incorporated herein, the term "Contractor" shall mean Seller, and the term "Contract" shall mean this Order:

- 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010), (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days.
- 52.203–15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111–5), if the subcontract is funded under the Recovery Act.
- 52.219.8, Utilization of Small Business Concerns (Jan 2011) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.
- 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
- 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a)).
- 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010) (29 U.S.C. 793), in all subcontracts expected to exceed \$15,000 unless performance and recruitment of workers will occur outside of the United States.
- 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010). (Applicable if this Order exceeds the simplified acquisition threshold in FAR 2.101, and contract effort is performed within the United States.)
- 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
- 52.222-54, Employment Eligibility Verification (JAN 2009).
- 52.223-18, Contractor Policy To Ban Text Messaging While Driving (SEP 2010).
- 52.227-19, Commercial Computer Software License (DEC 2007).
- 52.244-6, Subcontracts for Commercial Items (DEC 2010).
- 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

27. The following clauses from the Department of Defense FAR Supplement (DFARS) apply to this purchase and are incorporated by reference herein with the same force and effect as if they are given in full text. As used within the clauses incorporated herein, the term “Contractor” shall mean Seller, and the term “Contract” shall mean this Order:

- 252.204-7008, Export-Controlled Items (APR 2010).
- 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (SEP 2006). (Applicable if the items to be supplied under this Order are ITAR-regulated defense articles.)
- 252.225-7008, Restriction on Acquisition of Specialty Metals (JUL 2009).
- 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011).
- 252.227-7015, Technical Data--Commercial Items (MAR 2011)
- 252.246-7003, Notification of Potential Safety Issues (JAN/2007).
- 252.247-7023, Transportation of Supplies by Sea (10. U.S.C. 2631) (MAY/2002).
- 252.247-7024, Notification of Transportation of Supplies by Sea (10 U.S.C. 2631) (MAR/2000).

28. **Certifications**

The offeror, by signing its offer, hereby certifies compliance with the mandated clauses set forth within FAR 52.212-3 (JAN 2011). (See AMG Attachment A, available under the AMG corporate website.) Completed Attachment A documents are to be submitted with all offers.