

**AM GENERAL LLC**

Terms and Conditions of Purchase  
For

**COMMERCIAL (FAR PART 12) ITEMS**

1. The Purchase Order, these Terms and Conditions of Purchase, and any statement of work, statement of performance, requirement, specification or other document attached to or incorporated by reference in the Purchase Order, establish and constitute the complete and exclusive agreement between AM General LLC ("Buyer") and Seller with respect to the goods and services (as those terms are defined below) described therein. Such agreement is referred to herein as "this Order." No officer, employee or other representative of Buyer is authorized to make any oral contract or commitment for the purchase of goods or services or to modify, amend, or change the terms and conditions of this Order unless such modification or change is in writing approved by Buyer's Executive Director of Supply Management. As used in this Order, the term "goods" includes materials, articles, products, supplies, and components, and the term "services" includes any work or effort performed by Seller that is necessary or incidental to the delivery of goods purchased under this Order.

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 goods and services 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 goods furnished will be free from latent, patent, or other defects in material and workmanship. Seller also warrants that all such goods will be fit and sufficient for the purposes intended.

4. Goods purchased under this Order are subject to Buyer's inspection and approval at destination. If rejected, goods 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 goods returned as defective shall be replaced without authorization from Buyer. Payment for goods 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 and deliver to Buyer 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 and deliver to 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 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 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 goods 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) goods, 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 goods, services, devices, 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 hold 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 Government only if and to the extent that the United States Government 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 in default because of its failure to perform this Order under its terms if the failure arises from 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 in either its sovereign or contractual capacity (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. If Seller is unable to perform after 120 days, Buyer may terminate this Order pursuant to Article 13.

8. Buyer shall have the right at any time, by written direction of Buyer's Executive Director of 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 goods 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 goods 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 of 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 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 of Supply Management. If Seller does not accept Buyer's decision, Seller agrees to provide Buyer a formal written statement on the subject of the dispute within ninety (90) days of the Buyer's decision. 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 Buyer's interpretation of the performance requirements.

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. Buyer shall afford Seller reasonable opportunity to appeal such decision in Buyer's name. Buyer shall at all times be the sponsor of the appeal and may revoke its sponsorship at any time. Seller agrees to provide to Buyer any and all information requested by Buyer for the purpose of verifying, supporting, or providing any and all certifications required by the Contract Disputes Act of 1978, 41 U.S.C. Section 7101 et seq. Any such appeal shall be at the sole expense of Seller. As used in this provision, the term "appeal" shall include any and all proceedings under this provision before any board of contract appeals or federal court.

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 goods or to perform the services within the time specified in this Order, on written shipping authorizations furnished by Buyer, 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;

The Buyer's rights to terminate this Order under subdivisions B and C of this paragraph 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 of this paragraph.

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, goods or services similar to those terminated, and the Seller will be liable to the Buyer for any excess costs for those goods 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 goods, and (2) partially completed goods, 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 goods 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.

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 Order 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 goods 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 goods by customers of Buyer or others, and seller agrees to secure suitable goods 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 Order, 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 of Supply Management.

24. The Seller warrants the goods 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 Order and are incorporated by reference herein with the same force and effect as if they are given in full text. In the event it is determined that the goods and/or services are not a Commercial Item as defined in FAR 2.101, then Seller agrees that AM General LLC Terms and Conditions of Purchase for Non-Commercial (FAR Part 15) Items (January 2014) shall be applicable to this Order, in lieu of these terms and conditions, effective as of the date of this Order.

Seller shall insert the following provisions in lower tier subcontracts to the extent required for each lower tier subcontract by the FAR or other applicable law, either verbatim or in substance, and by incorporation-by-reference or otherwise as appropriate.

The terms "Government," "Contracting Officer," and equivalent phrases shall mean Buyer except that in the clauses identified below by "\*" the clause shall have its original meaning as written in the FAR:

- 52.203-6 Restrictions on Subcontractor Sales to the Government\* (Sep 2006) Alternate I (Sep 2006) (Applicable if this Order exceeds the simplified acquisition threshold.)
- 52.203-7 Anti-Kickback Procedures (Oct 2010) (Applicable if this Order exceeds \$150,000; includes subparagraph (c)(5) but excepts subparagraph (c)(1))
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions\* (Oct 2010) (Applicable if this order exceeds the Simplified Acquisition Threshold defined in FAR 2.101.)
- 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)) (Applicable if this Order 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) (Applicable if this Order is funded under the Recovery Act.)
- 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013) (Applicable if this Order has a value of \$25,000 or more.)
- 52.219-8 Utilization of Small Business Concerns (Jul 2013) (15 U.S.C. 637(d)(2) and (3)) (Applicable if this Order offers 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.
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999)
- 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)) (Applicable if this Order is for \$100,000 or more.)
- 52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793) (Applicable if this Order is expected to exceed \$15,000 unless performance and recruitment of workers will occur outside of the United States.)

- 52.222-37 Employment Reports on Veterans (Sep 2010) (Applicable if FAR 52.222-35 is applicable.)
- 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 (Aug 2013) (Applicable unless work to be performed entirely outside of U.S., or if period of performance is less than 120 days.)
- 52.223-11 Ozone-Depleting Substances (May 2001) (Applicable if this Order is for goods that may contain or be manufactured with ozone-depleting substances.)
- 52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving (Aug 2011)
- 52.225-13 Restriction on Certain Foreign Purchases (Jun 2008)
- 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009)
- 52.227-19 Commercial Computer Software License (Dec 2007)
- 52.232-40 Providing Accelerated Payment to Small Business Subcontractors (Dec 2013). (Applicable if this Order placed with Small Business concerns.)
- 52.233-3 Protest After Award (Aug 1996)
- 52.244-6 Subcontracts for Commercial Items (Dec 2013)
- 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 Order and are incorporated by reference herein with the same force and effect as if they are given in full text. In the event it is determined that the goods and/or services are not a Commercial Item as defined in FAR 2.101, then Seller agrees that AM General Terms and Conditions of Purchase for Non-Commercial (FAR Part 15) Items (January 2014) shall be applicable to this Order, in lieu of these terms and conditions, effective as of the date of this Order.

Seller shall insert the following provisions in lower tier subcontracts to the extent required for each lower tier subcontract by the DFARS or other applicable law, either verbatim or in substance, and by incorporation-by-reference or otherwise as appropriate.

The terms "Government," "Contracting Officer," and equivalent phrases shall mean Buyer except that in the clauses identified below by "\*" the clause shall have its original meaning as written in the DFARS:

- 252.204-7012 Safeguarding of Unclassified Controlled Technical Information (Nov 2013).
- 252.223-7008 Prohibition of Hexavalent Chromium (Jun 2013), if this Order is for goods, maintenance and repair services, or construction materials.

- 252.225-7001 Buy American and Balance of Payments Program (Dec 2012) (Applies if the goods furnished under this Order contain other than domestic components. Applies in lieu of FAR 52.225-1.)
- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Jun 2013) (Paragraph (d) is excluded.)
- 252.225-7021 Trade Agreements (Oct 2013) (Applies if the effort performed under this Order contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)
- 252.227-7015 Technical Data--Commercial Items\* (Jun 2013)
- 252.227-7037 Validation of Restrictive Markings on Technical Data\* (Jun 2013)
- 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Jun 2013) [Applicable if this Order involves the acquisition of steel as a construction material.]
- 252.244-7000 Subcontracts for Commercial Items (Jun 2013)
- 252.246-7003 Notification of Potential Safety Issues (Jun 2013)
- 252.247-7023 Transportation of Supplies by Sea (10. U.S.C. 2631) (Jun 2013)
- 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 (Nov 2013). (See AMG "Attachment A" document, available under the AMG corporate website.) Completed "Attachment A" documents are to be submitted with all offers.

29. **Conflict in Terms**

If there is conflict between the Purchase Order, these Terms and Conditions, or any other document attached to or incorporated into the Purchase Order by reference, the terms of the Purchase Order (excluding these Terms and Conditions and any document attached to or incorporated by reference in the Purchase Order) shall control. These Terms and Conditions shall control over any document other than the Purchase Order, including, without limitation, any Statement of Work attached to or incorporated by reference in the Purchase Order.

30. **Survival of Rights and Obligations**

Articles 3, 4, 5, 9, 11-15, 21, 22, 26, 27, 29, and 30 of these Terms and Conditions shall survive the termination or cancellation of this Order and remain valid after this Order has terminated or been cancelled. To the extent that any other provisions of these Terms and Conditions are meant to remain valid after this Order has terminated, been cancelled, expired or otherwise ended, such provisions shall have continued validity even after termination.