

**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 Purchaser. No officer, employee or other representative of Purchaser is authorized to make any oral contract of 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 the Executive Director Supply Management.

2. Time of delivery of this order is of the essence and Purchaser 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 Purchaser. 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 Purchaser. Seller warrants to Purchaser, 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 Purchaser'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 Purchaser. Payment for material on this order prior to inspection shall not constitute an acceptance thereof.

5. To the extent that the Goods delivered hereunder are not manufactured pursuant to the designs originated solely by Buyer, Seller guarantees that the sale and/or use of any or all Goods delivered hereunder will not infringe any United States or foreign patents, trademarks, or copyrights. Seller further agrees to indemnify, hold harmless, and defend at Seller's own expense, Buyer against any and all claims of patent, trademark or copyright infringement or of unfair competition arising out of the sale, cataloging, marketing, packaging, or advertising of Goods sold by Seller, including, but not limited to, claims based on the "Lemelson" patent claims related to U.S. Patent Nos. 5,351,078; 5,249,045; 5,283,641; 5,119,190; 5,067,012; 5,023,714; 4,984,073; 4,979,029; 4,511,918; 4,338,626; 4,148,061; 4,118,730; 4,969,038; 5,119,205; 5,128,753; 5,114,421. Seller further agrees to indemnify, hold harmless and defend, at Seller's own expense, Buyer against all liens, security interests, and/or encumbrances whatsoever asserted against such Goods, including claims to said merchandise, asserted by others. To the extent that the Goods delivered hereunder are manufactured pursuant to the designs originated by Buyer, the Seller hereby assigns to the Buyer, without reservation, all patent rights, copyrights and trademark rights relating to the Goods and all related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials. The Buyer, in turn, grants to the Seller a non-exclusive license to reproduce the Protected Materials for purposes related directly to the Seller's performance of its obligations to Buyer and for Seller's archival records. No other Protected Materials may be

reproduced for any other purpose without the express written permission of the Buyer. This non-exclusive license shall terminate immediately upon termination of the Purchase Order.

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 Purchaser 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 Manager, that states it constitutes 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:

- (1) drawings, designs, specifications, or quantities of materials or services to be provided hereunder;
- (2) the statement of work or description of services;
- (3) method of shipment or packing;
- (4) the time or place of performance, inspection, delivery, or acceptance of materials or of services; and
- (5) 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 Manager 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 Purchaser relating to goods or services covered by this purchase 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 Purchaser shall be of no force or effect, may be modified, removed or ignored by Purchaser without any liability to Seller and the information may be used by Purchaser in any way in the conduct of its business. Seller's sole rights with respect to use of such information by Purchaser, 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 purchase order. Seller agrees to promptly notify Purchaser of any pre-existing patents or any other form of protection which Seller may hold or know of which relates to the goods or services to be provided under this purchase order.

In connection with the development of any ideas, inventions, improvements, or discoveries, including all related information and know-how, related to the goods or services to be provided under this purchase order and for which Purchaser has provided or is to provide support to Seller in the form of funding, including but not limited to payments in whole or part for prototype components or tooling, designing, testing or consulting, Purchaser shall automatically be entitled to and Seller agrees to and hereby assigns all rights, title and interest to such ideas, inventions, improvements and discoveries (unless otherwise specifically agreed to in writing and in such event Purchaser shall be entitled to at least a nonexclusive, paid up, irrevocable, worldwide right and license including the right to fully sublicense third parties including the U.S. Government for all Governmental purposes to practice and have practiced for its purpose such invention). Seller agrees to promptly notify Purchaser in writing of any such idea, invention, improvement or discovery so developed. The provisions of this clause shall survive termination of fulfillment of this order and shall inure to the benefit of Purchaser's successors, subsidiaries, licensees, affiliates, or parents.

10. Purchaser 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 provided such appointment is not vacated within thirty (30) days from the date of such appointment; the execution by Seller of an assignment for the benefit of creditors. The exercise by Purchaser of the right of cancellation reserved in this paragraph shall not impose any liability upon Purchaser by reason of the cancellation nor have the effect of waiving damages which the Purchaser might otherwise be entitled to.

11. The parties agree to attempt to settle any dispute amicably. If the parties do not reach agreement, Seller shall request a final decision from Buyer's Executive Director Supply Manager. If Seller does not accept this 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 the Contracting Officer of Buyer's Government Prime Contract by a final decision 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, and provided further that Seller provides 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 paragraphs (C) and (D) below, by written notice of default to the Seller, terminate this Order in whole or in part if the Seller fails to —

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

The Buyer's rights to terminate this Order under subdivisions (2) and (3) 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 (1) 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. However, 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 for convenience.

15. Any right or remedy expressly conferred on the Purchaser herein shall not limit or modify any right or remedy which the Purchaser would otherwise have. When shipments to places other than the Purchaser's plant are authorized, Seller's invoices will be paid by Purchaser 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 Purchaser.

17. By making shipment under this purchase 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. Purchaser shall be entitled to any discounts allowable by Seller for prompt payment even though Purchaser 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 Purchaser.

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 AM General from any and all claims, suits liabilities, damages, or expenses asserted against or incurred by AM General by reason of the use of seller's product by customers of AM General 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 AM General with Certificate of Insurance evidencing same.

22. Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to AM General waivers of liens from all 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 Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to AM General, to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to AM General all moneys that the latter 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 Manager.

24. The Seller warrants the items sold pursuant to this purchase 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. The following clauses from the Federal Acquisition Regulation (FAR) apply to this purchase and are incorporated by reference with the same force and effect as if they are given in full text:

- 52.203-13, Contractor Code of Business Ethics and Conduct (12/2008).
- 52.219.8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2)(3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceed \$550,000 (\$1,000,000 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 Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212(a)).
- 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- 52.222-50, Combating Trafficking in Persons (Feb 2009).
- 52.222-54, Employment Eligibility Verification (Jan 2009)

- 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

26. The following clauses from the Department of Defense FAR Supplement (DFARS) apply to this purchase and are incorporated by reference with the same force and effect as if they are given in full text:

- 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note) (Deviation) (1/2008).
- 252.246-7003 Notification of Potential Safety Issues (1/2007).
- 252.247-7023 Transportation of Supplies by Sea (10. U.S.C. 2631) (5/2002).
- 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631) (3/2000)

## 27. **Certifications**

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