



**AMIDON CONTRACTING SOLUTIONS, INC.
PURCHASE ORDER STANDARD TERMS AND CONDITIONS**

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PRIME CONTRACT FLOWDOWN CLAUSES FOR PURCHASE ORDERS ISSUED UNDER FEDERAL CONTRACTS

THE FOLLOWING TERMS AND CONDITIONS SHALL BE APPLICABLE TO ALL PURCHASE ORDERS:

1. DEFINITIONS. As used in these Terms and Conditions of Purchase, the following terms shall have the following meanings:

- (a) "Supplies" means raw materials, components, intermediate assemblies, and end products;
- (b) "Services" means the direct engagement of time and effort with the primary purpose to perform identifiable tasks rather than to furnish end items of supply;
- (c) "Construction" means construction, alteration, or repair (including excavating and painting) of buildings, structures, or other real property;
- (d) "Buyer" means Amidon Contracting Solutions, Inc. ("ACS");
- (e) "Seller" means any person or legal entity that provides Supplies, Services, or Construction pursuant to a Purchase Order issued by Buyer;
- (f) "Purchase Order" means an offer by Buyer to Seller to buy Supplies, Services, or Construction that becomes a binding contract between Buyer and Seller upon written acceptance of Seller or upon Seller initiating performance;
- (g) "Government" means the United States Federal Government;
- (h) "Prime Contract" means the contract under which a Purchase Order is issued or any other contract which requires Buyer to procure services for a Customer;
- (i) "Customer" means a business entity or association, or any other entity or association, including, without limitation, the Government, with whom Buyer enters into a Prime Contract; and
- (j) "Work" means the provision of Services or Construction as set forth in the Purchase Order.

2. PURCHASE ORDERS; PRICE; ACCEPTANCE; MODIFICATION OF TERMS

- (a) Purchase Orders issued by Buyer to Seller - together with any referenced or attached drawings, specifications, statements of work, or special conditions - will specify the Supplies or Work required, including, but not limited to, the delivery schedule, period of performance, total compensation, rate/price and payment schedules related thereto. Each Purchase Order issued by Buyer shall be governed by these Terms and Conditions of Purchase.
- (b) The price payable to Seller shall be stated in the Purchase Order. The price shall not be increased to cover any future Seller price increases and shall be inclusive of all packing, packaging, cartage, premium transportation charges, reusable containers, service or carrying charges, permits, insurance, applicable taxes, fees and licenses, or any other charges of any nature unless specifically agreed to in writing by Buyer.
- (c) Acceptance of a Purchase Order by Seller may be made by signing the acknowledgment copy thereof or by partial performance thereunder, and any such acceptance shall constitute an unqualified agreement to all of these Terms and Conditions of Purchase unless otherwise modified in writing by the parties.
- (d) No additional or different terms and conditions proposed by the Seller in accepting the Purchase Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver

of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller.

3. GENERAL RELATIONSHIP.

The Seller is not an employee of ACS for any purpose whatsoever. Seller agrees that in all matters relating to the Purchase Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of the Purchase Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

4. APPLICABLE LAW.

These Terms and Conditions of Purchase shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to its rules or principles regarding conflicts of laws, except that any provision under these Terms and Conditions of Purchase that is: (a) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR) or the Defense Federal Acquisition Regulations Supplement (DFAR), as the case may be; (b) incorporated in full text or by reference from any agency regulation that implements or supplements from the FAR or DFAR or; (c) that is substantially based on any such agency regulation or FAR or DFAR provision, shall be construed and interpreted according to federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals and quasi-judicial agencies of the Government.

5. COMPLIANCE WITH LAWS; PERMITS, LICENSES.

Seller shall comply with all applicable federal, state and local laws, rules, regulations and orders ("Laws"), including, but not limited to, the following, as may be amended from time to time: (a) the Service Contract Act of 1965; (b) the Davis-Bacon Act of 1931; (c) the Fair Labor Standards Act of 1938; (d) the Walsh-Healy Public Contracts Act; (e) the Federal Occupational Safety and Health Act of 1970, including the preparation of Material Safety Data Sheets; (f) the Toxic Substances Control Act of 1976; and (g) any other federal law concerning labor relations, non-discrimination in employment, minimum wages, overtime compensation and hours of employment. Seller shall obtain all permits and licenses required for the performance of the Purchase Order at no additional charge to Buyer. If, as a result of any violation of Laws by Seller, its employees, agents or subcontractors at any tier, (i) Buyer's contract price or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages, Buyer may make a reduction of corresponding amounts (in whole or in part) in 2 the price of the Purchase Order or any other contract with Seller, or demand payment (in whole or in part) of the corresponding amounts. Seller shall pay such amounts within ten (10) days of such demand.

exceed the price(s) or rate(s) Seller charges its most favored customer for the same or substantially similar Supplies or Work, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller agrees that in the event of an announced price or rate reduction prior to the completion of the performance of the Work or shipment of Supplies, said price or rate reduction shall be passed on to Buyer for Supplies remaining to be shipped or Work remaining to be performed under the Purchase Order.

14. CERTIFICATION OF INDEPENDENT PRICE AND RATE DETERMINATION.

Seller certifies that the price(s) and rates(s) proposed have been arrived at independently, without consultation, communication or agreement with any others for the purpose of restricting competition and that Seller has not and will not knowingly disclose the price(s) and rate(s), directly or indirectly, to any other offeror.

15. CHANGE ORDER; MODIFICATION.

Buyer may, at any time by written notice to Seller, make changes to the Purchase Order (a "Change Order"). If any such change causes an increase or decrease in the cost or time required to perform the Work or deliver the Supplies, the price, performance/ delivery schedules, or both, shall be equitably adjusted and the Purchase Order so modified. Seller shall submit any claim for adjustment to Buyer within ten (10) days following receipt of the written Change Order. Failure of the parties to agree to an adjustment shall be considered a dispute under **Section 40 (Disputes)** hereof and shall be addressed in accordance therewith; however, pending resolution of any such dispute, Seller shall immediately proceed with the performance of the Purchase Order as changed by the Change Order. Seller shall not be entitled to any compensation for extra Work or additional Supplies not stated in the Purchase Order or Change Order unless, prior to the performance of such extra Work or delivery of such additional Supplies, Seller shall have received from Buyer written authorization for the same. Buyer shall have no liability for any Work performed or Supplies delivered by Seller and not described in the Purchase Order or a Change Order. Seller shall make no changes affecting the Work or Supplies without Buyer's or the Customer's prior written approval. Any approvals by Buyer or the Customer shall not relieve Seller of responsibility for any errors or deficiencies that may exist, or for performing the Work or delivering the Supplies in strict accordance with the requirements of the Purchase Order.

16. DELIVERY AND PERFORMANCE SCHEDULES.

Seller shall deliver the Supplies or perform the Work in strict adherence to the schedules set forth in the Purchase Order. Seller agrees that time is of the essence in the performance of the Purchase Order and there is potential for financial loss by Buyer in the event that Seller fails to deliver the Supplies or complete the Work within the time specified in the Purchase Order. Therefore, Seller agrees to pay Buyer for all expenses arising from Seller's failure to deliver the Supplies or complete the Work within the time allocated including, but not limited to, additional Buyer expenses for technical services, inspection, and administration costs; additional costs to other suppliers, subcontractors or consultants caused by the delay and charges from the Customer, including any liquidated damages for which Buyer may be liable to Customer resulting from Seller's failure to deliver the Supplies or complete the Work as provided in the

Purchase Order or breach of these Terms and Conditions of Purchase. Seller agrees to advise Buyer, as soon as possible, of any delays in complying with the performance schedule of any Purchase Order and the reasons thereof. If a delay is due to causes beyond the control of Seller and, where applicable, its suppliers or subcontractors, and without fault or negligence of any of them, and provided that Seller reports the delay to Buyer within a reasonable time of its' discovery, Buyer will either adjust the performance schedule or terminate the Purchase Order, or its effected portion, for convenience. Acceptance of late deliveries or performance not in strict conformance with the Purchase Order schedule shall not constitute a waiver of Buyer's rights under this **Section 16** or elsewhere under these Terms and Conditions of Purchase.

17. INSPECTION OF SERVICES AND CONSTRUCTION.

Buyer and the Customer shall have the right to inspect Work in progress at all reasonable times and places during performance. Rejected Work shall promptly be reperfomed in an acceptable manner and within a reasonable period of time at Seller's sole cost and expense. If inspections are made on Seller's premises Seller shall, without additional charge, provide reasonable assistance for the safety and convenience of the inspectors performing these duties. Inspections shall be performed in such a manner as to not unduly delay Work in progress. Unless otherwise agreed to in writing, all Work is subject to Buyer's and the Customer's inspection and acceptance or rejection of the Work, notwithstanding any previous inspection by Buyer and the Customer. Inspections shall not relieve Seller of its responsibility to furnish the Work in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and the Customer. Seller shall furnish Buyer and the Customer with the records of inspection for the Work at any time during the performance of the Work upon request therefore by Buyer or the Customer.

18. INSPECTION OF SUPPLIES.

Buyer and its Customer may inspect or test materials, work in progress and completed Supplies at all reasonable times and places prior to shipment. If inspections and tests are performed on Seller's premises, Seller shall, without additional charge to Buyer, its Customer or any of their or its representatives, provide reasonable facilities and assistance for the safety and convenience of the parties performing such inspections or tests. Unless otherwise agreed to in writing, all Supplies furnished under the Purchase Order are subject to Buyer's inspection and acceptance or rejection at Buyer's specified destination, notwithstanding any previous inspection or test by Buyer or its Customer. An inspection or test at source or at destination shall not relieve Seller of its responsibility to furnish the Supplies in strict conformance with the Purchase Order requirements. Seller shall maintain an inspection and quality control system acceptable to Buyer and its Customer. Seller shall furnish Buyer the records of inspection or test for Supplies delivered under the Purchase Order at any time upon Buyer's request. No inspection or monitoring by Buyer or its Customer, or failure to do so, shall affect or diminish Seller's sole responsibility and liability for the quality of the Supplies purchased by Buyer.

REGARDLESS OF WHETHER BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

38. INDEMNIFICATION.

(a) Seller shall indemnify, defend and hold ACS and ACS's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) intentional misconduct, negligence, or fraud, (ii) breach of any representation, warranty or covenant made under the Purchase Order, or (iii) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party. (b) Buyer shall promptly notify Seller of any claim against Buyer that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.

39. INFRINGEMENT INDEMNITIES. Seller shall indemnify, defend and hold Buyer and Buyer's customers (hereinafter collectively referred to as "Buyer") harmless from and against any claim, suit or proceeding ("claim") brought against Buyer asserting that the Supplies or Services, or any part thereof, furnished under any Purchase Order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such claim including reasonable attorneys' fees. In the event such Supplies or Services or use thereof are enjoined in whole or in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such Supplies or Services; (ii) in a manner acceptable to Buyer, substitute equivalent Supplies or Services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (iii) refund to Buyer an amount equal to the purchase price for such Supplies or Services plus any excess costs or expenses incurred in obtaining substitute Supplies or Services from another source.

[SEE FOLLOWING PAGES FOR FAR/DFAR FLOWDOWN CLAUSES]

40. DISPUTES.

Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute ("dispute") arising under or relating to any Purchase Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the County of Wake, State of North Carolina. The arbitrator(s) shall be bound to follow the provisions of this Order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

41. STANDARDS OF BUSINESS ETHICS & CONDUCT.

ACS believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. Buyer's expectation is that Seller also will conduct its business fairly, impartially and in an ethical and proper manner. If Seller has cause to believe that Buyer or any employee or agent of Buyer has acted improperly or unethically under this agreement/order, Seller shall report such behavior to ACS.

42. ORDER OF PRECEDENCE. In the event of an inconsistency or conflict between provisions of a Purchase Order, the inconsistency or conflict shall be resolved by giving precedence in the following order:

1. The Purchase Order and any purchase descriptions contained therein.
2. These Terms and Conditions of Purchase
3. Specifications and/or drawings.
4. Other provisions when attached.

43. ENTIRE AGREEMENT. The Purchase Order, including all documents incorporated therein in full text or by reference, shall constitute the entire agreement and understanding between the parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.



PRIME CONTRACT FLOWDOWN CLAUSES FOR PURCHASE ORDERS ISSUED UNDER FEDERAL CONTRACTS

If the Purchase Order is placed under a Government Prime Contract or a federally-funded subcontract, the following clauses set forth in the Federal Acquisition Regulations (FAR) and the Department of Defense Federal Acquisition Regulations Supplement (DFAR), in effect on the date of the Prime Contract, where applicable, are incorporated herein by reference with the same force and effect as if given in full text. The exception is all CAS-related clauses which are effective the date of the Purchase Order. Where necessary to make the context of these clauses applicable to the Purchase Order, unless otherwise indicated, the term "Contractor" shall mean "Seller", the term "contract" shall mean "the Purchase Order", and the terms "Government", "Contracting Officer", and equivalent phrases shall mean "Buyer". Seller hereby agrees to flow down the following FAR/DFAR clauses, where applicable, to its lower-tier subcontractors.

IT IS THE SOLE RESPONSIBILITY OF SELLER TO COMPLY WITH THE FAR/DFAR CLAUSES APPLICABLE TO SELLER, THE SUBJECT MATTER OF THE PURCHASE ORDER, AND THE PRIME CONTRACT. THE FAR/DFAR CLAUSES SET FORTH HEREIN ARE INCLUDED AS AN EASE OF REFERENCE FOR SUBCONTRACTOR ONLY AND ARE NOT INTENDED TO SET FORTH A COMPLETE AND ACCURATE ITEMIZATION OF THE FAR/DFAR CLAUSES APPLICABLE TO SUBCONTRACTOR, THE SUBJECT MATTER OF THE PURCHASE ORDER, OR THE PRIME CONTRACT.

The full text of these clauses can be obtained from the Internet at:

<http://www.arnet.gov/far>
<http://farsite.hill.af.mil>
<http://www.acq.osd.mil/dpap>

I. PURCHASE ORDERS FOR COMMERCIAL ITEMS

"Commercial Item" is defined by FAR 2.101, which includes certain services.

A. Federal Acquisition Regulation (48 CFR Chapter 1) Clauses:

52.219-8 Utilization of Small Business Concerns (15 U.S.C. 637(d)(2)(3))
52.222-26 Equal Opportunity (E.O. 11246)
52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212(a))
52.222-36 Affirmative Action for Workers with Disabilities (29 U.S.C. 793)
52.222-41 Service Contract Act of 1965, as Amended (41 U.S.C. 351, et seq.)
52.244-6 Subcontracts for Commercial Items and Commercial Components
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. Appx 1241 and 10 U.S.C. 2631)

B. Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2) Clauses:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note)
252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).
252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)

II. PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS AND SERVICES

A. Federal Acquisition Regulation (48 CFR Chapter 1) Clauses:

APPLICABLE TO ALL PURCHASE ORDERS

52.202-1 Definitions
52.203-3 Gratuities
52.204-2 Security Requirements
52.208-8 Required Sources for Helium and Helium Usage Data
52.211-15 Defense Priority and Allocation Requirements
52.223-7 Notice of Radioactive Materials
52.223-11 Ozone Depleting Substances
52.223-12 Refrigeration Equipment and Air Conditioners
52.224-2 Privacy Act
52.225-3 Buy American Act - Supplies
52.225-13 Restrictions on Certain Foreign Purchases
52.227-1 Authorization and Consent*
52.227-6 Royalty Information

52.227-9 Refund of Royalties
52.227-14 Rights in Data – General*
52.234-1 Industrial Resources Developed Under Defense Product Act Title III
52.237-2 Protection of Government Buildings, Equipment, and Vegetation
52.244-6 Subcontracts for Commercial Items and Commercial Components
* Within these clauses “Government” and “Contracting Officer” ARE NOT interpreted to mean “Buyer”
APPLICABLE TO CONSTRUCTION PURCHASE ORDERS OVER \$2,000 FOR CONSTRUCTION
52.222-6 Davis-Bacon Act
52.222-7 Withholding of Funds
52.222-8 Payrolls and Basic Records
52.222-9 Apprentices and Trainees
52.222-10 Compliance with Copeland Act Requirements
52.222-11 Subcontracts (Labor Standards)
52.222-12 Contract Termination-Debarment
52.222-13 Compliance with Davis-Bacon and Related Act Regulations
52.222-14 Disputes Concerning Labor Standards
52.222-15 Certification of Eligibility
52.222-27 Affirmative Action Compliance Requirements for Construction*
52.225-9 Buy American Act-Construction Materials
*Applicable if the procurement exceeds \$10,000
APPLICABLE TO SERVICE PURCHASE ORDERS OVER \$2,500
52.222-41 Service Contract Act of 1965, as Amended
APPLICABLE TO PURCHASE ORDERS OVER \$10,000
52.222-20 Walsh-Healey Public Contracts Act*
52.222-21 Prohibition of Segregated Facilities
52.222-26 Equal Opportunity**
52.222-35 Affirmative Action for Workers with Disabilities
52.225-8 Duty Free Entry
*Not applicable for procurements for Services or Construction
**Applicable if the aggregate value of Seller awards is in excess of \$10,000 during any 12-month period
APPLICABLE TO PURCHASE ORDERS OVER \$25,000
52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
APPLICABLE TO PURCHASE ORDERS OVER \$100,000
52.203-6 Restrictions on Subcontractor Sales to the Government
52.203-7 Anti-Kickback Procedures
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity
52.203-12 Limitation on Payments to Influence Certain Federal Transactions
52.215-2 Audit and Records – Negotiation
52.215-14 Integrity of Unit Prices
52.219-8 Utilization of Small Business Concerns
52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation
52.223-2 Clean Air & Water*
52.223-14 Toxic Chemical Release Reporting
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement
52.228-5 Insurance - Work on a Government Installation
52.229-3 Federal, State, and Local Taxes
52.236-13 Accident Prevention
52.247-63 Preference for US Flag Air Carriers
52.247-64 Preference for Privately Owned US Flag Commercial Vessels
52.248-1 Value Engineering



252.203-7001 Prohibition on Persons Convicted of Fraud or Other
Defense-Contract-Related Felonies
252.209-7000 Acquisition from Sub-Contractors Subject to On-Site
Inspection Under the INF Treaty
252.225-7012 Preference for Certain Domestic Commodities
252.225-7013 Duty-Free Entry
252.225-7014 Preference for Domestic Specialty Metals
252.225-7044 Balance of Payments Program--Construction Material
APPLICABLE TO PURCHASE ORDERS OVER \$1,000,000
252.211-7000 Acquisition Streamlining