

**Texas A&M Research Foundation  
At the International Ocean Discovery Program**

**Standard Terms and Conditions  
Incorporated into all Purchase Orders**

The following definitions shall apply to all Purchase Orders, attachments, appendices or other documents, whether incorporated by reference or in full text.

1. **Seller** may also be referred to and shall mean “Vendor”
2. **Purchase Order** may also be referred to and shall mean “order” or “agreement”
3. **TAMRF’s Authorized Agent** may also be referred to and shall mean “TAMRF’s Contract Administrator”, “Contract Administrator” or “Buyer’s Purchasing Agent”.
4. **Scope of Work** may also be referred to as and shall mean “Statement of Work”.
5. **FAR** means the Federal Acquisition Regulations
6. **Contractor, Government and Contracting Officer** shall mean “Seller”, “Buyer”, and “TAMRF’s Authorized Agent” respectively, or these terms may have their ordinary meaning as determined by TAMRF at its sole discretion.
7. **TAMRF** shall mean Texas A&M Research Foundation.

**For additional information or questions regarding these terms and conditions, please contact:**

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**SECTION 1 – General Provisions**

**1. SELLER’S ACCEPTANCE**

The items or services covered by this order shall be furnished by seller subject to all the terms and conditions set forth in this order including the following, which seller in accepting this order agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the items or the performance of all or any portion of the services covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made part of this order only to the extent of specifying the nature of the items or services ordered, the price thereof, and delivery date, and then only to the extent that such terms are consistent with the terms and conditions of this order.

**2. WAIVER**

The failure of buyer to enforce at any time any of the provisions of this order, or to exercise any option provided, or to require, at any time, performance by the seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this order or any part thereof, or the right of buyer thereafter to enforce each and every such provision.

**3. WARRANTIES**

In addition to any express warranties seller may make, seller warrants the items/services delivered to be free from defects in labor, material and manufacture, and to be in compliance with any drawings or specifications incorporated or referenced and with any samples furnished by the seller. All warranties shall run to buyer, its successors and assigns.

**4. INSPECTION**

All work performed and all deliverable items/services are subject to final inspection and acceptance at destination notwithstanding any payments or inspection at source. Final inspection and acceptance shall be conclusive except as to latent defects, fraud, such gross mistakes as amount to fraud, and the seller’s warranty obligations. Supplies to be furnished hereunder shall be subject to inspection by buyer and/or third party inspectors upon the premises of the seller.

**5. ASSIGNMENT**

This order is assignable by buyer. Except as to any payment due, this order is not assignable by seller without written approval of buyer. Any attempt to do so shall be void. If such consent is given, it shall not relieve seller from any of the obligations of this order and any transferee or subcontractor shall be considered the agent of seller and, as between the parties hereto, seller shall be and remain liable as if no such transfer or subcontracting had been made.

**6. CHANGES**

Only buyer’s authorized agent may make changes within the general scope of this order by giving written notice to seller. If such changes affect the cost or the period of performance of this order, an equitable adjustment may be made if seller submits a written claim for adjustment within thirty (30) days of the receipt of notification of such change. No change by seller shall be recognized without written approval of buyer’s authorized purchasing agent. Buyer’s technical representative(s) are not authorized agents of buyer.

**7. SHIPPING INSTRUCTIONS**

Shipments must be made as specified on the face of this order unless subsequently modified in writing by buyer’s authorized agent.

**8. TERMINATION AND DELAYS**

Buyer may, by written notice stating the extent and effective date, terminate this order for convenience at any time. Buyer shall pay seller as full compensation for performance prior to such termination (1) the unit or pro rata order price for the delivered and accepted portion and (2) a reasonable amount, not otherwise recoverable from other sources by the seller with respect to the undelivered or unaccepted portion of this order provided compensation hereunder shall in no event exceed the total order price. Buyer may, by written notice, terminate this order for seller’s default, at any time, if seller refuses or fails to comply with the provisions of this order, or fails to make deliveries within the time specified or any written extension thereof. Time is of the essence in this order. If after giving notice of termination for default buyer determines that failure to perform this order is due to causes beyond the control and without the fault or negligence of the seller, or if such delay is due to failure of buyer, not caused or contributed to by seller, buyer may extend the time for completion of this order or termination may be deemed for the convenience of buyer.

The rights and remedies of buyer provided in this order shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

**9. LIABILITY FOR BUYER FURNISHED PROPERTY**

Seller assumes complete liability for any property, tooling, articles or material furnished by buyer to seller in connection with this order and seller agrees to pay for all such property, tooling, articles or materials spoiled by it, or not otherwise, accounted to buyer’s satisfaction. The furnishing to seller of any property, tooling, articles or material in connection with this order shall not, unless otherwise expressly provided for, be construed to vest title to seller. Any buyer tooling, articles or materials furnished shall not be used for any other purpose than work performance under this order.

**10. INDEMNIFICATION AND INSURANCE**

In the event the seller, its employees, agents or subcontractors enter premises occupied by or under the control of the buyer in the performance of this order, the seller agrees that it will be responsible to, and indemnify and hold harmless, the buyer, its regents, officers and employees from any loss, cost, damage, expense or liability by reason of property damages or personal injury of whatsoever kind or character, arising out of, as a result of, or in connection with such performance occasioned by the negligence or other fault, by act or omission of the seller, its agents, employees or subcontractors; and the seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain worker’s compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing this order on premises occupied by or under the control of the buyer.

**11. PATENT INDEMNITY**

Seller shall pay all royalty and license fees relating to the items covered herein. In the event any third party shall claim that the manufacture, use or sale of these goods covered hereby, infringes any copyright, trademark, or patent, the seller shall indemnify buyer and hold buyer harmless from any cost, expenses, damage or lost incurred in any manner by buyer on account of any such alleged infringement.

**12. FAX AND EMAIL**

The parties agree that receipt by seller of a facsimile or email copy of this order, or any amendment(s) thereto, signed by the buyer’s authorized purchasing agent, shall be evidence that seller agrees to be bound by the terms of this order and shall be deemed an original certifying to the party’s intent to enter into this order and to its authenticity, validity, and enforceability.

**13. DELIVERY**

Order delivery time as shown on the face of the purchase order reflects the number of days expected for delivery to the designated location under normal conditions. Failure of seller to state delivery time obligates seller to complete delivery in 14 calendar days. If delay is unforeseen, seller shall give written notice to the buyer. The buyer has the right to extend the delivery date if reasons appear valid. If the seller fails to deliver these supplies by the promised delivery date, without giving acceptable reasons for delay, or if supplies are rejected for failure to meet specifications, buyer reserves the right to purchase specified items elsewhere, and charge the full increase in price, cost of handling and rebidding, if any, to the seller. Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from buyer.

**14. PAYMENT**

Seller shall submit one copy of an itemized invoice showing order number and buyer purchase order number. If the invoice is not addressed as instructed, payment will be delayed. Buyer will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services on an uncontested invoice.

**15. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that seller is an independent contractor and that neither it nor its employees are servants, agents or employees of TAMRF, TAMRF being interested only in the complete performance of the services or delivery of the items herein contemplated.

**16. APPLICABLE LAW**

Irrespective of the place of performance, this order will be construed and interpreted according to the federal common law of government contracts as enumerated and applied by federal judicial bodies, boards of contract appeals and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Texas shall apply, excluding any jurisdiction’s “conflict of laws” rules which would direct or refer to the laws of another jurisdiction.

**17. OTHER APPLICABLE LAWS**

Any provision required to be included in an order of this type by any applicable and valid federal, state or local statutes, act, executive order, law, ordinance, rule or regulation shall hereby be deemed to be incorporated by reference as if set forth in full text.

**SECTION 2 – Federal Provisions**

The clauses listed below are incorporated into, and form a part of the terms and conditions of this order as if set forth in full text. Any reference to a “Disputes” clause in any of the clauses below shall be deemed to refer to the “Disputes” clause contained in TAMRF’s Prime Subcontract. In no event shall any such reference to a “Disputes” clause be construed to allow the seller, without the concurrence of the buyer, to prosecute and appeal, either directly or in the name of buyer, to buyer’s Prime Contractor for such Prime Subcontract. Seller represents that it has in its possession the full text of the clauses listed in this Section 2.

**The following provisions apply regardless of the dollar amount of this order:**

- FAR 52.202-01 Definitions
- FAR 52.216-07 Allowable Cost and Payment
- FAR 52.222-01 Notice of Labor Disputes
- FAR 52.222-03 Convict Labor
- FAR 52.222-26 Equal Opportunity
- FAR 52.222-35 Affirmative action for Disabled Veterans of the Vietnam Era (38 U.S.C. 4212(a))
- FAR 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
- FAR 52.223-06 Drug Free Workplace
- FAR 52.223-18 Contractor Policy to Ban Text Messaging while Driving
- FAR 52.225-13 Restrictions on Certain Foreign Purchases
- FAR 52.227-14 Rights in Data
- FAR 52.244-6 Subcontracts for Commercial Items
- 45 CFR Part 650.4 NSF Patent Policy

**This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

**The following provisions apply if the amount of this order exceeds \$15,000.00:**

- FAR 52.222-20 Walsh-Healey Public Contracts Act
- FAR 52.222-36 Affirmative Action for Workers with Disabilities

**The following provisions apply if the amount of this order exceeds \$100,000.00:**

- FAR 52.203-03 Gratuities
- FAR 52.203-05 Covenant Against Contingent Fees
- FAR 52.203-06 Restrictions on Subcontract Sales to Government
- FAR 52.203-07 Anti-Kickback Procedures
- FAR 52.203-08 Limitation on Payments to Influence Certain Federal Transactions
- FAR 52-215-02 Audit and Records-Negotiation (if order was entered into by negotiation)
- FAR 52.222-04 Contract Work Hours and Safety Standards
- FAR 52-225-13 Restrictions on Certain Foreign Purchases
- FAR 52.227-01 Authorization and Consent
- FAR 52.227-02 Notice and Assistance Regarding Patent and Copyright Infringement
- FAR 52.244-02 Competition in Subcontracting
- FAR 52.247-63 Preference for U.S. Flag Air Carriers
- FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels

**The following provision applies if the amount of this order exceeds \$650,000.00:**

- FAR 52.219-9 Small Business Subcontracting Plan (does not apply to small business concerns)

**The following provisions apply if the amount of this order exceeds \$30,000.00:**

- FAR 52-219-8 Utilization of Small Business Concerns

**The following provisions apply to cost reimbursable and/or time and material orders:**

- FAR 52.242-01 Notice of Intent to Disallow Costs
- FAR 52.244-02 Subcontracts