

**MATERIALS SCIENCES LLC
PURCHASE ORDER TERMS AND CONDITIONS**

1. This subcontract, when executed by both parties, becomes the exclusive agreement between the parties for the work specified. It supercedes any previous agreements or understandings concerning the subject matter, and no change, modification, or revision shall be valid unless in writing and signed by both parties.
2. As used herein, "lower tier subcontract" means purchase order issued by Subcontractor; "Government" means the Government of the United States of America or an agency thereof; "work" means all articles, materials, supplies or services to be furnished by Subcontractor under this subcontract.
3. Subcontractor is performing as an independent contractor and neither it nor any of its agents or employees shall be considered agents or employees of contractor.
4. This subcontract shall not be billed at higher prices than specified herein. Unless otherwise provided herein, prices shown herein shall include all taxes not expressly imposed by law on Contractor. No charge shall be made for taxes not required; for example, sales tax on work performed for resale by Contractor. Invoices shall be submitted on an incremental basis.
5.
 - (a) Subcontractor shall maintain a quality control system acceptable to contractor. During performance of this order, subcontractor's quality control, inspection system and manufacturing processes are subject to review, verification and analysis by contractor and, if a government prime contract number or other government designation appears on the face of this order, an authorized government representative(s).
 - (b) All Supplies ordered may be subject to (i) inspection, verification or testing during the period of manufacture; (ii) inspection or verification prior to shipment; and (iii) final inspection and acceptance at destination notwithstanding any prior payment of inspection and acceptance. Such inspection and verification rights shall extend to the Government, if a Government prime contract number or other Government designation appears on the face of this order. If any inspection or test is made on the premises of Subcontractor or its lower-tier suppliers, Subcontractor shall, without additional charge to Contractor, provide and shall require its lower-tier suppliers to provide, all reasonable facilities and assistance for the safety and convenience of Contractor and Government inspectors in the performance of their duties.
 - (c) Contractor may reject and hold at Subcontractor's expense subject to Subcontractor's reasonable disposal instructions, Supplies which do not conform to applicable specifications, drawings, samples or descriptions or which are defective in material, workmanship or design (unless such design is Contractor's detailed design). Without limiting any other rights Contractor may have, Contractor, at its option, may require Subcontractor (i) to repair or replace at Subcontractor's expense, any Supplies or items thereof which fail to meet the requirements of applicable design, specifications, drawings, samples, descriptions or other requirements of this order; or (ii) to refund the price of any such item. Previously rejected Supplies reworked to specification or replaced, shall not be retendered to Contractor by Subcontractor unless Contractor has consented to such retender. Subcontractor shall notify Contractor of past rejections of all retendered Supplies.
 - (d) Inspections and tests by Contractor or the Government do not relieve Subcontractor of responsibility for defects or other failures to meet the requirements of this order discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided herein.
6.
 - (a) To the extent that this subcontract includes tangible goods, subcontractor warrants that all goods furnished hereunder will be free from defects in material and workmanship, conform to applicable specifications, drawings, samples and descriptions, and except to the extent that the work is performed in accordance with contractor's design, be free from design defects. Unless otherwise specified in this subcontract, the goods shall be new and not used or reconditioned, shall be merchantable and (if subcontractor knows or has reason to know of the intended purpose or use therefor) shall in all respects be suitable for the particular purpose or use for which they are purchased.

- (b) To the extent that this subcontract is for professional services, Subcontractor warrants that it will perform in accordance with generally accepted practices within its profession.
7. All shipments are prepay and add, F.O.B. 135 Rock Road, Horsham, PA 19044, unless specified elsewhere.
8. If this subcontract is issued under a Government prime contract, then the Government "Changes" clauses apply (see FAR 52.243-1 and 52.243-2). If this is not a Government subcontract, then the following Changes clause applies:
Contractor may at any time, by written notice and without notice to sureties or assignees, make changes within the general scope of this subcontract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection or acceptance or point of delivery; (iv) delivery schedule.
Should any such change increase or decrease the cost of, or the time required for, performance of any part of this subcontract, an equitable adjustment in the terms of this subcontract shall be negotiated by the parties. No claim by Subcontractor for adjustment will be valid unless submitted to Contractor within thirty (30) days from date of such change. Nothing contained in this clause shall relieve Subcontractor from proceeding without delay in the performance of this subcontract as changed.
9. (a) Subcontractor shall be liable for any loss or destruction of or damage to property of Contractor or its customer or the owner of any site on which the work hereunder or any portion thereof is to be performed caused by acts or omissions of Subcontractor, its representatives, agents or employees.
(b) Subcontractor shall be liable for any loss or destruction of, or damage to, property furnished to Subcontractor by Contractor or its customer and shall be responsible for returning any such property in as good condition as when received, except for reasonable wear and tear, or, in the case of supplies and materials, reasonable consumption thereof in the performance of work hereunder in accordance with the provisions of this subcontract.
10. Subcontractor hereby indemnifies and shall defend and hold harmless Contractor and its customer from any claim or damages of any kind, including reasonable attorney's fees, whether arising before or after completion of the work, caused by any act or omission of Subcontractor or its agents, or by any breach by Subcontractor of any warranty or other provision of this subcontract, excepting only claims or damages arising from the sole active negligence of Contractor or its customer.
Without in any way limiting the foregoing, Subcontractor and its lower tier subcontractors shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and shall maintain proper Worker's Compensation Insurance covering all employees performing this subcontract. Contractor may specify in the Subcontract Schedule coverages and limits required.

11. USE OF DATA

Subcontractor shall not use or disclose to third parties any data, designs, or other information not already in the public domain belonging to or supplied by or on behalf of Contractor, except when specifically authorized in writing by the Contractor's Subcontract Administrator. No license is granted under any patents and other intellectual property owned by Contractor except for the purpose of Subcontractor making and selling Supplies to Contractor pursuant to this order. Upon Contractor's written request, such data, designs, or other information and any copies thereof shall be returned to Contractor. Where Contractor's data, designs, or other information are furnished to Subcontractor's suppliers, Subcontractor shall insert the substance of this provision in its lower tier subcontracts. This shall not preclude Subcontractor's disclosure where: (a) necessary to the performance of its obligations under this subcontract; (b) required to comply with any reporting or disclosure requirements imposed on Subcontractor by law or regulation; (c) required by order or subpoena issued by a court or governmental agency; or (d) necessary to the defense or prosecution of any claim in connection with the subject matter of this subcontract.

Any information which Subcontractor may disclose to Contractor with respect to the design, manufacture, sale or use of the items covered by this purchase order shall be deemed to have been disclosed as part of the consideration for this purchase order, and Subcontractor shall not assert any claim against Contractor by reason of Contractor's use or disclosure thereof.

Where payment is made for experimental, developmental or research work performed hereunder, Subcontractor agrees that all title to and all other rights and legal interests (including copyright) in all data, analyses, graphs, reports, physical property, or other subject matter prepared, procured, or produced in the performance of this purchase order shall vest in Contractor. Subcontractor further agrees to execute an assignment in a form satisfactory to Contractor giving it all title, rights and legal interests to any such data and the copyright therein and all property produced, procured, or prepared. All such materials shall be delivered to Contractor promptly upon expiration or termination of this Agreement. Subcontractor agrees to have agreements with its employees and agents adequate to be able to convey by such assignment and the assignment referenced below all title, rights and legal interests required by this Article. Subcontractor agrees to disclose promptly and in writing to the Contractor all inventions, improvements, or discoveries (whether or not patentable) which Subcontractor conceives or reduces to practice during the period of performance of this purchase order. Subcontractor hereby assigns to Contractor all of Subcontractor's title, rights and legal interests in and to such inventions, improvements, or discoveries. Subcontractor further agrees to execute and deliver to Contractor all documents and perform all lawful acts which Contractor deems necessary to vest all title, rights and legal interests in Contractor in said inventions, improvements, discoveries, patent applications, and patents.

12. ASSIGNMENTS

Neither this subcontract nor any duty or right under it shall be delegated or assigned in whole or in part by Subcontractor without the prior written consent of the Contractor's Subcontract Administrator. In the event Contractor consents to an assignment hereunder, Contractor reserves the right to make direct settlements and/or adjustment in price with Subcontractor under the terms of this subcontract notwithstanding any assignment and without notice to the assignee. No assignment shall discharge Subcontractor of its obligations hereunder.

13. TERMINATIONS - STOP WORK

Unless another clause is referenced in the Subcontract Schedule, the following shall apply:

(a) Termination for Default. If Subcontractor is in default under any provision of this subcontract or if Subcontractor becomes insolvent or unable to meet its payroll or, upon notice of such default from Contractor, Subcontractor either fails to remedy such default within 10 days of such notice by Contractor or fails to provide satisfactory evidence that such default will be corrected, Contractor may, without notice to Subcontractor's sureties or assignees, terminate this subcontract. Thereupon, Contractor shall have the right to complete such work by whatever method Contractor may deem expedient, and Contractor shall have the right to take possession of and to use any or all of the materials, supplies and property of any and every kind furnished by Subcontractor for such work. The expense of so completing such work, together with a reasonable charge for administering any contract for such completion, will be charged to Subcontractor and such expense will be deducted by Contractor out of such monies as may be due or may at any time thereafter become due to Subcontractor. In case such expense exceeds the sum which would have otherwise been payable under this subcontract, then Subcontractor and its sureties shall be liable for and shall upon notice from Contractor promptly pay to Contractor the amount of such excess.

Upon receipt of any such written notice of termination, Subcontractor shall, at its expense, for that work affected by any such termination: (i) assist Contractor in making an inventory of all materials and data; and (ii) assign to Contractor lower tier subcontracts as designated by Contractor.

In the event of such termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Subcontractor in connection with the work hereunder shall become the property of and be delivered to Contractor.

(b) Optional Termination. Contractor may, at its option, terminate this subcontract by written notice thereof to Subcontractor, whether or not Subcontractor is in default. Upon any such termination, Subcontractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but, as the sole right and remedy Contractor shall pay Subcontractor an amount determined in accordance with the

following (without duplication of any item): (i) all amounts due and not previously paid to Subcontractor for work completed in accordance with this subcontract prior to such notice; (ii) the cost of settling and paying claims arising out of the termination of work under lower tier subcontracts, if such claims are approved by Contractor's Subcontract Administrator, such approval not to be unreasonably withheld; and (iii) any other reasonable costs incidental to such termination of work.

The foregoing amounts shall include a reasonable sum, under all of the circumstances, as profit for all work satisfactorily performed by Subcontractor.

In the event of such termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Subcontractor in connection with the work hereunder shall become the property of and be delivered to Contractor.

14. DISPUTES

In the event of a dispute concerning a question of fact arising under this subcontract, which is not disposed of under applicable provisions of this subcontract, the parties shall make every reasonable effort to resolve the disagreement through negotiation. If such negotiation leads to an understanding that results in potential costs to Contractor's customer, then Contractor reserves the right to submit such negotiated cost impact to its customer for a determination of allowability and to receive such determination, before reaching final agreement with the Subcontractor. If an understanding is not reached, or if the costs are determined to be not allowable and Contractor elects not to assume the costs itself, and if further negotiations fail, then an unresolved dispute exists. Contractor shall so notify its customer in accordance with the Prime Contract Disputes Clause, if any. The Contractor shall then either (i) elect to submit the dispute to final and conclusive arbitration in Montgomery County, Pennsylvania before three Arbitrators selected from the panels of Arbitrators of the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrators may be entered in any court having jurisdiction thereof, or (ii) resort to legal action.

If the circumstances are appropriate, Contractor may, at its sole discretion, appeal under its prime contract for the benefit of the Subcontractor, and in such event, the Subcontractor shall fully cooperate with and support Contractor's effort on its behalf.

In no event shall the Subcontractor be denied its reasonable right to be heard and to present its evidence. Pending final decision of a dispute hereunder, the Subcontractor shall proceed diligently with the performance of the subcontract and in accordance with Contractor's direction.

15. EQUAL OPPORTUNITY

The Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended, and the implementing rules and regulations (41 CFR Part 60) are incorporated herein by reference, unless this subcontract is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 or provisions of any superseding Executive Order. As used in said clause, "contractor" means the subcontractor hereunder.

16. PROCUREMENT REGULATIONS, OTHER REGULATIONS, AND LAWS

- (a)** In addition to the specific requirements stated in the following subparagraphs, Subcontractor agrees to comply with all applicable local, state and federal laws, and executive orders and regulations issued pursuant thereto. Subcontractor agrees to indemnify Contractor against any loss, cost, damage or liability, including attorneys fees, by reason of Subcontractor's failure to comply with the requirements of this or the following subparagraphs.
- (b)** If this subcontract is issued pursuant to a U. S. Government funded prime contract, all clauses required by the cognizant agency's procurement regulations are hereby incorporated in this subcontract and such clauses apply whether or not they are spelled out in detail elsewhere in this subcontract. This section re-

fers to such regulations as Defense Acquisition Regulations (DAR) formerly the Armed Services Procurement Regulations (ASPR), the Federal Procurement Regulations (FPR), The Department of Energy Procurement Regulations (DOEPR), the Environmental Protection Agency Procurement Regulations (EPPR) and the Federal Acquisition Regulations (FAR).

- (c) The packaging, labeling and shipping of all HAZARDOUS SUBSTANCES including DANGEROUS MATERIALS, must conform with all applicable Federal and State laws and regulations. In addition to the application of proper shipping labels on the outside container, each container of HAZARDOUS SUBSTANCE shall be marked with the appropriate precautionary label in accordance with Article 85, General Industry Safety Orders, California Administrative Code or the Manufacturing Chemists Association Manual L-1, "Guide to Precautionary Labeling of Hazardous Chemicals."
- (d) If this subcontract is for construction on Government property, and is in excess of \$2,000.00, the Davis Bacon Act is by this reference incorporated into the subcontract.
- (e) Subcontractor shall comply with all laws, interim and permanent standards, rules and regulations of the Occupational Safety and Health Act and all state and federal laws and regulations relating to safety and health standards. By acceptance of this subcontract, Subcontractor agrees to furnish only supplies, articles, services and equipment which comply with such laws, standards and regulations.

17. LABOR DISPUTE

Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this subcontract, Subcontractor shall immediately give notice thereof to Contractor. Subcontractor shall insert the substance of this provision in its lower tier subcontracts issued hereunder.

18. RELEASE OF INFORMATION

No news release or public announcement, denial or confirmation of same, of any part of the subject matter of this Subcontract shall be made without the prior written approval of Contractor's Administrative Director.

19. SEVERABILITY

If any provision of this subcontract shall be determined illegal or nonenforceable, such provision shall be deemed severable from the balance of this subcontract and the balance of this subcontract shall remain in full force and effect.

20. GOVERNING LAW

This subcontract shall be deemed made in the Commonwealth of Pennsylvania and shall be construed and interpreted solely in accordance with the laws of such Commonwealth.

21. CONTRACTOR AUDIT RIGHTS

Subcontractor agrees to provide access to its plants and facilities and to maintain its books, records, documents, computerized records, projections and other supporting data in accordance with generally acceptable accounting principles and practices which properly reflect all direct and indirect elements of cost of whatever nature whether incurred or anticipated to be incurred for the performance of any work hereunder or anticipated work hereunder for same or similar Supplies; and such shall be made available for inspection, audit, reproduction and retention by any authorized representative of Contractor or, if applicable, at Contractor's option, the Government Department or Agency having jurisdiction.